

December 18, 2000 (8:45AM)

**OFFICE OF PROCUREMENT AND ASSISTANCE POLICY
CY 2000 INDEX OF POLICY FLASHES**

POLICY FLASH #	TITLE OF FLASH	DATED	ACTION OFFICER (orig.)
2000-01	Federal Acquisition Circular (FAC) 97-15	01/14/00	R. Webb K. Smith
2000-02	Merit Review Guide for Financial Assistance and Unsolicited Proposals	02/02/00	T. Wood
2000-03	Maximizing Small Business Utilization	02/16/00	G. Cowan
2000-04	Extension of 8(a) Program - Memorandum of Understanding	02/28/00	R. Webb
2000-05	M&O Contractor Employee Assignments to Washington, DC	03/07/00	S. Mournighan
2000-06	DOE Notice of Proposed Rulemaking: DEAR 970 Re-write	03/13/00	J. Bashista K. Smith
2000-07	Interim Final Rule	04/05/00	T. Wood
2000-08	Small Business Conference	04/05/00	M. Turturro (ED-OSDBU)
2000-09	Federal Acquisition Circular (FAC) 97-16	04/11/00	K. Smith R. Webb
2000-10	Extension of 8(a) Program - Memorandum of Understanding	04/18/00	R. Webb
2000-11	Acquisition Letter on Small Business Programs	04/20/00	R. Webb
2000-12	A. Final Rule - Financial Management Clauses B. Final Rule - Mentor Protège Program	04/26/00	M. Righi R. Webb
2000-13	Financial Assistance Simplification - Consultation with Partners	05/05/00	T. Wood
2000-14	Office of Federal Procurement Policy (OFPP) Determination of Executive Compensation Benchmark Amount	05/09/00	T. Sheppard
2000-15	Federal Acquisition Circular (FAC) 97-17	05/16/00	K. Smith
2000-16	1. Greening the Government 2. Foreign Travel 3. DOE Authorized Subcontract for USE by DOE M&O with NIS Scientific Institutes through the STCU	05/22/00	R. Langston T. Sheppard R. Webb
2000-17	Extension of 8(a) Program - Memorandum of Understanding	06/15/00	R. Webb
2000-18	Approval of Deviation Requests	06/19/00	K. Smith

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POLICY FLASH #	TITLE OF FLASH	DATED	ACTION OFFICER (orig.)
2000-19	A. Federal Acquisition Circular (FAC) 97-18 B. GSA's Small Business Online Shopping C. OFPP Best Practices for Past Performance D. GAO Decision on Contract Documentation	06/23/00	K. Smith
2000-20	Terms and Conditions for Institutions Participating in Federal Demonstration Partnership III	06/27/00	T. Wood
2000-21	A. Multiple Award Contracts (MAC), Governmentwide Agency Contracts (GWAC), and Federal Supply Schedules (FSS) B. Site Utilization and Management Planning	08/22/00	K. Smith R. Webb
2000-22	Federal Acquisition Circular (FAC) 97-19 (URGENT - SEE ITEM 4 IMMEDIATELY!)	08/25/00	K. Smith
2000-23	TERMINATION OF DOE'S INFORMATION MONITORING SYSTEM (TIMS)	08/29/00	T. Wood
2000-24	HUBZONE PROCUREMENT TRAINING COURSE	09/08/00	D. Tilly
2000-25	PROCUREMENT POLICY WEBSITE UPDATES	09/19/00	J. Tower
2000-26	FEDERAL ACQUISITION CIRCULAR 97-20	11/09/00	D. Wright
2000-27	RECENT DEAR RULES	11/17/00	K. Smith
2000-28	REQUESTS FOR THE INVOLVEMENT OF THIRD PARTIES IN DOE PROGRAMS IN RUSSIA AND OTHER STATES IN THE FORMER SOVIET UNION	11/21/00	R. Webb
2000-29	ACQUISITION GUIDE UPDATES	12/13/00	K. Smith
2000-30	A. Service Contract Act (AL-2000-10) B. FY 2000 Legislative Provisions (AL-2000-11) C. FY 2000 Legislative Provisions (FAL-2000-02) D. 2000 Executive Compensation (AL-2000-12)	12/15/00	D. Wright T. Wood T. Sheppard K. Smith
2000-31	SMALL BUSINESS DEVELOPMENTS	12/18/00	R. Webb

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2000-32 FAC 97-21 (Final Rule) 12/29/00 D. Tilly



Headquarters Policy Flash

FLASH 00-01

DATE: January 14, 2000
TO: Distribution
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Federal Acquisition Circular (FAC) 97-15

SUMMARY: This Policy Flash transmits a summary of the eleven items included in FAC 97-15, which was published in the Federal Register on December 27, 1999, at 64 FR 72414. The effective date for each item is noted below in the summary - each rule is applicable to solicitations issued on or after the rule's effective date. A companion document, the Small Entity Compliance Guide (SECG) was published with this FAC. Both the FAC and the SECG are available via the Internet at <http://www.arinet.gov/far>. Contracting personnel should review the details of each item in the full text of the FAC.

FLASH 00-01

*Please note: If you have comments on the interim rule published in item 3 - **Contract Bundling**, please forward them to Robert Webb, MA-51, no later than **February 16, 2000** for a consolidated DOE response.*

1. Pollution Control and Clean Air and Water (Effective February 25, 2000)

This final rule amends the FAR to remove Subpart 23.1, Pollution Control and Clear Air and Water; the provision at 52.223-1, Clean Air and Water Certification; and the clause at 52.223-2, Clean Air and Water. This amendment eliminates the burden on offerors to certify that they do not propose to use a facility for performance of the contract that is on the Environmental Protection Agency's (EPA) "List of Violating Facilities." Contracting officers will use the "GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs" (GSA List) to ensure that they do not award contracts to ineligible offerors. Excluded parties whose ineligibility is limited by reason of a Clean Air Act (CAA) or Clean Water Act (CWA) conviction are identified by the facility and conviction listing, the Cause and Treatment Code "H" annotation, in the GSA List. Internet access to the GSA List is available at <http://www.epis.arnet.gov>. These FAR revisions do not change long-standing policy that a contracting officer cannot award a contract if performance of the contract would be at a facility convicted of a CAA or CWA violation unless the EPA has certified that the facility has corrected the cause giving rise to the conviction.

2. Foreign Acquisition (Part 25 Rewrite) (Effective February 25, 2000)

This final rule amends FAR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 25, 36, and 52 to clarify policies and procedures concerning foreign acquisition and to rewrite Part 25 in plain language.

The revision includes an overview of the Part at FAR 25.001; a matrix at FAR 25.002 to explain when the various subparts apply; a consolidation of all definitions in FAR 25.003; changes in FAR 25.502 which affect evaluations under the Buy American Act and NAFTA and the Trade Agreements Act; and evaluation examples at FAR 25.504.

Acquisition Letter 96-05, dated May 10, 1996, remains in effect; however, contracting personnel will need to adapt FAR references in the Acquisition Letter to the revised FAR coverage. The Office of Procurement and Assistance Policy is in the process of updating AL 96-05 and will reissue as soon as possible. Any questions regarding this AL should be referred to Robert Webb at (202) 586-8264.

FLASH 00-01

3. **Contract Bundling** *(Effective December 27, 1999)*

This interim rule amends the FAR to implement Sections 411-417 of the Small Business Reauthorization Act of 1997. Sections 411-417 amend Title 15 of the U.S.C. to define "contract bundling," and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

The interim rule establishes several new requirements, including:

- ◆ consideration of the effect of "bundling" in written acquisition plans (FAR 7.105);
- ◆ justification of any "bundling" (FAR 7.107);
- ◆ market research focused on the necessity of "bundling" (FAR 10.001);
- ◆ Evaluation factors relating to offerors' past performance in attaining small business goals (FAR 15.304); and
- ◆ consideration in the "structure" of solicitations (FAR 15.305).

4. **Deobligation Authority** *(Effective February 25, 2000)*

This final rule revises FAR 4.804-5 and 42.302 to establish deobligation of excess funds as one of the contract administration functions normally delegated to the contract administration office. In addition, the rule includes editorial revisions for plain language purposes.

5. **Transition of the Financial Management System Software Program** *(Effective February 25, 2000)*

This final rule amends the FAR to delete Subpart 8.9, Financial Management Systems Software Mandatory Multiple Award Schedules Contracts Program.

6. **Document Availability** *(Effective December 27, 1999)*

This final rule amends the Federal Acquisition Regulation (FAR) at 11.201(d) and 52.211-2 to update how the public may obtain Department of Defense specifications and standards.

7. **SBA's 8(a) Business Development Program** *(Effective December 27, 1999)*

The interim rule published as Item III of FAC 97-12 is converted to a final rule without changes. The rule implements changes made in the Small Business Administration's 8(a) Business Development (8(a)BD) Program regulation, contained in 13 CFR Parts 121, 124, and 134, regarding the eligibility procedures for admission to the 8(a)BD and contractual assistance programs.

FLASH 00-01

8. Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold (Effective December 27, 1999)

This final rule amends FAR Subpart 13.5 to implement Section 806 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65). Section 806 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104-106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend, through January 1, 2002, the expiration of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000.

9. Review of Award Fee Determinations (Burnside-Ott) (Effective February 25, 2000)

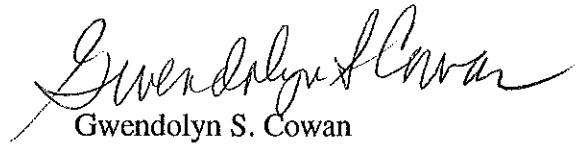
This final rule amends the Federal Acquisition Regulation (FAR) to implement rulings of the United States Court of Appeals and the United States Court of Federal Claims. The rulings state that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies. FAR 16.405-2(a) is amended to delete the statement that award fee determinations are not subject to the disputes clause of the contract and to add a statement that such determinations and the methodology for determining award fee are unilateral decisions made solely at the discretion of the government.

10. Nondisplacement of Qualified Workers--Commercial Items (Effective February 25, 2000)

This final rule amends FAR 52.212-5(c) to add the clause entitled 52.222-50, Nondisplacement of Qualified Workers, to the list of clauses that the contracting officer may incorporate by reference when applicable.

11. Technical Amendments (Effective December 27, 1999)

Amendments are made at sections 2.101, 5.205, 14.201-6, 15.208, 19.702, 32.503-6, 33.213, 36.104, 42.203, 52.215-1, 52.228-14, and 52.236-25 to update references and make editorial changes.


Gwendolyn S. Cowan
Director



Headquarters Policy Flash

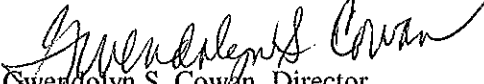

FLASH 2000-02

DATE: February 2, 2000
TO: Distribution
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Merit Review Guide for Financial Assistance & Unsolicited Proposals**

SUMMARY: This Policy Flash transmits an electronic copy of the Department's subject Guide. This Guide is being issued to provide guidance on conducting merit reviews and to promote a more uniformed and disciplined approach to the review process. A hard copy of the Guide was sent to the Program Secretarial Officers on January 25, 2000. Questions may be referred to Trudy Wood at (202) 586-5625.

This Guide has been reviewed by the Field Management Council and approved by the Deputy Secretary. You can obtain additional electronic copies of the Guide on the Internet at www.pr.doe.gov/fahome.html.



Gwendolyn S. Cowan, Director

ATTACHMENT

Department of Energy

Merit Review Guide

for

**Financial Assistance
and
Unsolicited Proposals**



**Office of Procurement and Assistance Policy
Office of Procurement and Assistance
Management**

December 1999

TABLE OF CONTENTS

I. INTRODUCTION	1
Purpose	
Applicability	
Background	
II. MERIT REVIEWS	1
Purpose of Review	
Types of Merit Review	
Merit Review Procedures	
III. RESPONSIBILITIES	2
Program Officials	
Merit Review Chair (or other official responsible for the review)	
Contracting Officer	
Selection Official	
IV. SELECTION AND NUMBER OF REVIEWERS	4
Selection	
Number of Reviewers	
V. CONFLICTS OF INTEREST AND CONFIDENTIALITY	5
Conflicts of Interest	
Confidentiality and Communications	
VI. EVALUATION CRITERIA	6
Basis of Rating	
Development of Criteria	
VII. RATING PLAN	6
Rating Scale	
Rating Method	
Weighting	
Rating Plan for Noncompetitive Applications and Unsolicited Proposals	
VIII. CONDUCT OF REVIEWS	7
Conduct of Panel Reviews	
Conduct of Mail Reviews	
IX. DOCUMENTATION	9
Summary Statement	
Ranking Sheet	

XI. APPENDICES

Appendix A: GLOSSARY	11
Appendix B: CONFLICT-OF-INTEREST/NON-DISCLOSURE CERTIFICATE	13
Appendix C: RATING PLAN FOR NONCOMPETITIVE APPLICATIONS AND UNSOLICITED PROPOSALS	14
Appendix D: SUMMARY STATEMENT FORMAT	18
Appendix E: RANKING SHEET FORMAT	19

MERIT REVIEW GUIDE FOR FINANCIAL ASSISTANCE AND UNSOLICITED PROPOSALS

I. INTRODUCTION

Purpose: This document provides guidance on conducting merit reviews of financial assistance applications and unsolicited proposals. While program/project officials are encouraged to tailor this guidance to their specific programs, merit reviews should be conducted in a manner consistent with the guidelines presented in this document.

Applicability: This guidance applies to merit reviews of financial assistance applications/proposals. Merit reviews are required for all discretionary financial assistance awards: competitive and noncompetitive grants, competitive and noncompetitive cooperative agreements, and unsolicited proposals. Merit reviews are also required for renewals of these awards.

Background: In accordance with Federal requirements, it is Department of Energy (DOE) policy that discretionary financial assistance actions be awarded through a merit-based selection process. Section 600.13 of Title 10, Code of Federal Regulations (CFR), provides the regulatory basis for this process and defines Merit Review as a "thorough, consistent and objective examination of applications based on pre-established criteria by persons who are independent of those individuals submitting the applications and who are knowledgeable in the field of endeavor for which support is requested." The decision-making process for financial assistance awards varies across DOE programs. While selection officials may make award decisions based solely on the merit review results, other considerations, such as program policy factors and the availability of funds, often play an important role. However, in all cases, selection officials rely heavily on the evaluations provided by the merit reviewers in making their selection decisions. In today's funding environment, it is increasingly important to ensure that merit review evaluations provide a sound basis for decision-making and that selection officials have the maximal amount of useful information on which to base their selection and funding decisions.

II. MERIT REVIEWS

Purpose of Review: The primary purpose of a merit review is to provide an assessment of the technical/scientific merit of an application or an unsolicited proposal through a narrative critique and one or more adjectival or numerical ratings based on pre-established criteria.

The merit review also provides a forum for reviewers to comment on other aspects of the application/proposal (e.g., environmental concerns, human subject and animal welfare concerns, and budgetary considerations) that fall outside the concept of technical/scientific merit per se. While these comments may provide useful information to selection officials, program officials, and Contracting Officers and identify concerns that must be addressed, they should be clearly separated from the discussion (i.e., narrative critique) and rating of technical/scientific merit.

Types of Merit Review: Merit reviews generally fall into two categories: 1) panel reviews where reviewers meet face-to-face or through electronic conferencing to discuss the applications/proposals and 2) mail reviews done by mail or electronic transmission. Merit reviews should be conducted in the most suitable way given the circumstances.

Panel Reviews: Panel reviews are preferred if time and logistics permit convening a merit review panel. Panel reviews are generally conducted on applications received in response to a solicitation. The selection official usually appoints a Merit Review Chair who is responsible for coordinating the evaluation, setting the agenda, and ensuring that the required documentation is prepared. The panel evaluates applications/proposals in accordance with applicable merit review procedures and the rating plan.

Mail Reviews: Mail reviews may be used when it is not efficient to convene a panel. Generally, mail reviews are conducted on noncompetitive applications and unsolicited proposals. These reviews are similar to panel reviews except reviewers do not discuss the application/proposal. The official responsible for the mail review coordinates the evaluation and ensures that the required documentation is prepared. Reviewers evaluate the applications/proposals in accordance with applicable merit review procedures and the rating plan.

Merit Review Procedures: Program offices may develop and implement internal procedures for conducting merit reviews if the procedures are consistent with the guidelines in this document or they may adopt this Guide as their procedures. If a program office chooses to adopt this Guide, the solicitation and/or the rating plan should describe the specific review process for the solicitation. If a Program office chooses to develop its own merit review procedures, the procedures should minimize the administrative burden on reviewers and be stated as clearly and succinctly as possible. The procedures must describe and define:

- The roles and responsibilities of the individuals involved in the selection process within the organization and the roles and responsibilities of other individuals, if the merit review function has been delegated. For example, the procedures should describe the roles and responsibilities of: 1) the program official; 2) the Merit Review Chair or official responsible for the review; 3) the merit reviewers; and 4) the selection official.
- The review process, including the initial screening or review for conformance to administrative and technical requirements, the merit review, and the program policy factors review.
- The decision-making process to be followed by the selection official with regard to the use of the merit review recommendations.
- The documentation needed to support the selection decision.

III. RESPONSIBILITIES

Program Officials: Program officials are responsible for:

- Developing the program office's merit review procedures and Program Rules, when appropriate;
- Developing technical descriptions of the areas of interest for inclusion in the solicitation;
- Developing evaluation criteria and instructions for preparing applications;
- Developing a rating plan;
- Selecting merit reviewers, when appropriate;
- Conducting initial screening/reviews for conformance with technical requirements;

- Serving as a resource to the merit review panel prior to discussions, if requested by the Chair. When program officials serve as a resource, they may not participate in the merit review discussions;
- Recommending application of the program policy factors, when appropriate; and
- Performing a technical evaluation of costs on the selected applications/proposals.

Merit Review Chair (or other official responsible for the review): The Merit Review Chair is responsible for:

- Assisting program officials in developing a rating plan, if requested;
- Selecting merit reviewers, when appropriate;
- Preparing the justification for using less than three reviewers;
- Handling all arrangements for the merit review panel meetings.
- Obtaining conflict of interest/confidentiality certificates from the individuals participating in the merit review and selection process;
- Assuring that conflict of interest policies are followed;
- Ensuring that the reviewers follow the rating plan and provide a sound, well documented evaluation;
- Assuring that due consideration is given to input from each reviewer;
- Preparing a summary statement for each application that summarizes the evaluation and the recommendations of the individual merit reviewers;
- Preparing a ranking sheet, if appropriate; and
- Maintaining all merit review documentation.

Contracting Officer: If the applications are received in response to a solicitation, the Contracting Officer is responsible for:

- Concurring with the evaluation criteria and instructions for preparing applications.
- Preparing the solicitation.
- Issuing the Federal Register notice and the solicitation.
- Concurring with the rating plan.
- Advising program officials and Merit Review Chairs on matters relating to soliciting and awarding financial assistance instruments, including conflict of interests and confidentiality of information issues.
- Conducting the initial screening/review for conformance with the solicitation requirements.

The Contracting Officer is always responsible for:

- Evaluating proposed costs.
- Determining whether the applicant is a responsible entity.
- Negotiating the agreement.
- Awarding the agreement.

Selection Official: The Selection Official is responsible for:

- Appointing Merit Review Chairs.
- Appointing merit reviewers, when appropriate.
- Approving the rating plan.
- Approving the review of applications/proposals by less than three reviewers.

- Reviewing summary statements and ranking sheets.
- Applying the program policy factors, when appropriate.
- Selecting applications for award.

IV. SELECTION AND NUMBER OF REVIEWERS

Selection: Merit reviewers may be federal or non-federal individuals. These reviewers must be well qualified, by either training or experience, or both, in the particular scientific or technical fields that are the subjects of the review.

Qualifications: The official selecting reviewers should consider the following:

- The individual's scientific or technical education and experience.
- The extent to which the individual has engaged in relevant work or research, the capacities in which the individual has done so, and the quality of such work or research.
- The need for the review group to include within its membership experts from various specialty areas within relevant scientific or technical fields.

While reviewers must have expertise in the areas addressed in the proposals and sufficient knowledge to judge the merits of the application, the more closely a reviewer's expertise matches an applicant's, the more likely it is that the two could be direct competitors or collaborators. Officials may want to recruit a variety of reviewers, some whose expertise is directly relevant and some, who are knowledgeable but are not working directly in the specific subject area, to act as a check on possible bias. It is highly recommended that program officials use reviewers from outside the program/project office responsible for the financial assistance program.

External Reviewers: External reviewers may be non-DOE federal or non-federal employees. If the application is for research and development, the use of more external reviewers may enhance the quality of the review. External reviewers can bring fresh view points, alternative perspectives, and state-of-the-art understanding to the evaluation process.

Prohibition on Reviewers: The selection official may not be a part of the merit review group. It is highly recommended that the following individuals not be a part of the merit review group: 1) the program official, if the program official reports to and is rated by the selection official; 2) anyone in the direct chain of supervision above the selection official or the program official, such as a Division Director or an Associate Director; and 3) if the program official is a supervisor, none of the employees who report to and are rated by the program official.

Preference: In merit reviewer selection, there should be no preference based on race, ethnic identity, gender, religion, region, age, or institutional affiliation.

Number of Reviewers: Generally, at least three qualified individuals will review each application/proposal. If fewer than three reviewers are used, the official responsible for the merit review must document the reasons, obtain the approval of the selection official, and include this documentation in the merit review file.

V. CONFLICTS OF INTEREST AND CONFIDENTIALITY

Conflicts of Interest: Individuals with a conflict of interest may not participate in the merit review of a financial assistance application or an unsolicited proposal. All merit reviewers and ex officio members of merit review panels must sign a Conflict-of-Interest/Non-Disclosure Certificate, in writing or electronically, prior to the beginning of the review process. The reviewer must certify that he/she will not participate in the review of any financial assistance application/proposal involving a particular matter in which the reviewer has a conflict of interest or where a reasonable person may question the reviewer's impartiality. In addition, the reviewer must agree to disclose any actual or perceived conflicts of interest as soon as the reviewer is aware of the conflict. Appendix B provides the Department's CONFLICT-OF-INTEREST/NON-DISCLOSURE CERTIFICATE for Merit Reviewers Involved in the Selection of Financial Assistance Applications or Unsolicited Proposals. The official responsible for the review must obtain signed certificates from all merit reviewers prior to disseminating applications and retain the certificates in the merit review file.

If a merit reviewer becomes aware of a conflict or a situation that may give the appearance of a conflict of interest during the evaluation, the reviewer must immediately disclose the matter to the official responsible for the review or the Contracting Officer. Situations that could be perceived as conflicts of interest may include:

- The application being reviewed was submitted by: a recent student; a recent teacher; a former employer; or a close personal friend or a relative of the reviewer, the reviewer's spouse, or the reviewer's minor children.
- The application being reviewed was submitted by a person with whom the reviewer has had longstanding differences.
- The application being reviewed is similar to projects being conducted by the reviewer or by the reviewer's organization.

The official responsible for the merit review, in consultation with the Contracting Officer and Counsel, will decide if a potential conflict is so remote or inconsequential that there is little or no likelihood that it will affect the integrity of the process. If the potential conflict of interest is significant, the official responsible for the review must avoid or mitigate the conflict. In most cases, reviewers will not be allowed to review or participate in the deliberations on any application where there is even the appearance of a conflict of interest.

Confidentiality and Communications: Information and materials provided in applications and unsolicited proposals are submitted to DOE for the purpose of application/proposal evaluation and may contain trade secrets and/or other privileged or confidential commercial or financial information. Except as provided in the Conflict-of-Interest/Non-Disclosure Certificate, these materials must not be shared or discussed with individuals who are not participating in the same evaluation proceedings. Merit reviewers must not solicit opinions on particular applications or parts thereof from experts outside the pertinent merit review group. There must be no direct communications between merit reviewers and applicants. Any request for additional

information or inquiries must be directed to the Contracting Officer or the DOE official responsible for the merit review process. Confidential business or privileged information in applications must not be used to the benefit of the reviewer.

Merit reviewers may not inform principal investigators, their organizations, or anyone else of the recommendations. A breach of confidentiality could deter qualified individuals from serving as merit reviewers and inhibit those who do serve from engaging in free and full discussions. DOE will maintain confidentiality by not releasing the names of the reviewers of a particular application/proposal unless required by law.

VI. EVALUATION CRITERIA

Basis for Rating: The DOE financial assistance regulations require that applications be evaluated against pre-established merit review criteria. These criteria should form the only basis for the rating and the narrative critique of each application.

Development of Criteria: Program officials should develop criteria for solicitations or program rules that include all aspects of technical/scientific merit. The idea is to develop criteria that are conceptually independent of each other, but inclusive when taken together. While criteria will vary from one solicitation to another, the criteria should:

- Focus reviewers attention on the project's underlying merit (i.e., significance, approach, and feasibility). The criteria should focus not only on the technical details of the proposed project but also on the broader importance or potential impact of the project.
- Be easily understood. If the criteria are susceptible to varying interpretations, reviewers will use their own interpretation.
- Be stated as clearly and succinctly as possible.

VII. RATING PLAN

Rating Scale: Program officials (with the assistance of the Merit Review Chair, where appropriate) should develop a rating scale that encourages reviewers to make the finest discriminations they can reliably make.

Scale: Generally the rating scale should:

- Be defined so that larger scale values represent greater degrees of merit and smaller values represent smaller degrees (e.g. On a scale of 0 to 5, 5 represents the highest degree of merit and 0 represents an absence of merit).
- Include an appropriate number of scale positions to permit reliable differentiations among applications. If there are too many increments on the scale, the differences between increments may not be reliable or meaningful. If there are too few increments, the differences will not be apparent. The scale should have at least five steps (0-4) and not more than 11 steps (0-10).
- Include "zero" or "unacceptable" at the low end of the scale to offer reviewers a scale position that indicates a complete absence of merit relative to the criterion being rated.
- Induce reviewers to use the entire scale in order to make the differentiations that they need to make.

Scale Definitions: The comparability of ratings across reviewers and review groups requires that all reviewers use the rating scale in the same way. Thus, it is imperative that the various scale positions be well defined so that all reviews are calibrated in the same way and so that an adjective or numerical rating will represent the same cognitive appraisal by different reviewers. Program officials should clearly and, to the extent possible, precisely define the scale positions in their rating plans.

Rating Method: Program officials should determine how the applications will be rated and describe the method in the rating plan. Specifically, program officials must decide:

1. Whether to assign a single rating of merit for the application or whether to rate each criteria separately.
 - **Overall rating of merit:** Under this system, merit reviewers assign a single, overall rating of merit for the application taking into consideration all the evaluation criteria.
 - **Criteria ratings:** Under this system, merit reviewers assign a separate rating to each criteria. An overall rating of merit may then be derived by averaging the criteria ratings, totaling the ratings, or assigning specific weights to the ratings and adding the totals. The plan must state if and how the overall rating of merit will be calculated.
2. Whether to use individual ratings or consensus ratings.
 - **Individual rating method:** Under this system, each reviewer prepares an independent rating/ratings for each application based on the pre-established criteria. The individual rating method is always used for mail reviews and may be used for panel reviews. The merit review score is derived by averaging or totaling the merit reviewers' overall ratings (see overall rating of merit and criteria rating above).
 - **Consensus rating method:** Under this system, the merit review panel develops a consensus rating/ratings based on the pre-established criteria and a consensus narrative critique for each application. The consensus rating/ratings reflects the collective opinion of all the merit reviewers regarding only the scientific/technical merit of the application.

Weighting: It may be appropriate to weight the evaluation criteria under specific circumstances. Program officials should decide if and how the criteria should be weighted. If the evaluation criteria are weighted, the solicitation must provide the weight or relative importance of each criteria. The rating plan and the instructions to the merit reviewers should clearly describe the weighting system to be used.

Rating Plan for Noncompetitive Applications and Unsolicited Proposals: Appendix C provides the Department's rating plan for noncompetitive applications and unsolicited proposals.

VIII. CONDUCT OF REVIEWS

Conduct of Panel Reviews: Generally, panel reviews will be conducted as follows:

Prior to the panel meeting: The Merit Review Chair or official responsible for the review should:

- Obtain signed Conflict-of-Interest/Non-Disclosure Certificates prior to disseminating applications.
- Provides reviewers copies of the evaluation criteria, the rating plan and/or merit review procedures, and application preparation instructions.
- Provide copies of the applications and instructions for protecting and returning the applications.

Reviewers must:

- Sign the Conflict-of-Interest/Non-Disclosure Certificate.
- Read and understand the evaluation criteria, the rating plan and/or merit review procedures, and application preparation instructions.
- Evaluate each application (except those that present a conflict of interest or an appearance of a conflict).
- Prepare preliminary comments on the merits of the application in accordance with the merit review evaluation criteria. The rating plan should provide instructions on how to prepare these preliminary comments.
- Be prepared to discuss each application at the meeting.

Procedures During the Meeting: Generally, the Chair will introduce each application, call upon individual reviewers to present their comments, and invite discussion. At the appropriate time, the Chair will request each member to individually prepare a rating (or ratings) and a narrative critique for each application. If the rating plan calls for a consensus rating, the Chair will ensure that a consensus is reached and that a consensus narrative critique is prepared for each application.

Documentation: The Chair or the official responsible for the review should ensure that the following documents are prepared:

- Summary Statement for each application.
- Ranking Sheet, if appropriate.

Conduct of Mail Reviews: :

Prior to the review: The official responsible for the mail review must:

- Obtain signed Conflict-of-Interest/Non-Disclosure Certificates prior to disseminating applications.
- Provide reviewers copies of the evaluation criteria, the rating plan and/or the merit review procedures, application preparation instructions, a review form, and instructions for completing the review form.
- Provide copies of the applications and instructions for protecting and returning the applications.

Review: Reviewers must:

- Sign the Conflict-of-Interest/Non-Disclosure Certificate;
- Read and understand the evaluation criteria, rating plan and/or merit review procedures; application preparation instructions, and instructions for completing the review form;
- Evaluate each application (except those that present a conflict of interest or an appearance of a conflict);

- Provide a narrative critique that addresses each evaluation criterion;
- Assign a rating or ratings that reflect the reviewer's opinion of the merit of the application in accordance with the specific evaluation criteria; and
- Complete the review form;

Documentation: The official responsible for the review should:

- Record the individual ratings and calculate the score.
- Prepare a summary statement for each application.
- Prepare a ranking sheet, if appropriate.

Documents may be sent by mail or through electronic transmission, if the system is secure.

IX. DOCUMENTATION

Summary Statement: The summary statement is the official merit review record and recommendation for each application/proposal reviewed. It provides the selection official an assessment of the technical/scientific merit of the application. The summary statement should summarize the information contained in the individual evaluations. It may also identify issues that fall outside the scope of technical merit, but which need to be addressed by the program official or the contracting officer, such as environmental or human subjects concerns. The narrative critique in the summary statement may be used for debriefings or be sent to the applicant's principal investigator or project director, since these comments provide valuable information for improving the project or for preparing future applications.

Responsibility: The Merit Review Chair or the official responsible for the review is responsible for the preparation of a summary statement for each application/proposal reviewed. The summary statements for a group of applications may be compiled into one consolidated report provided the information described below is included in the report.

Content: A recommended Merit Review Summary Statement Format is provided at Appendix D. The summary statement should include the following features, if appropriate:

- Solicitation/Program Rule Number
- Applicant
- Application Number
- City/State
- Project Title
- Brief Description of the Project
- Proposed budget
- Rating - Individual rating/ratings or consensus rating/ratings
- Score
- Narrative Critique: This section should reflect the merit reviewers' assessment of the scientific/technical merit of application. It should summarize the salient features of the individual or consensus comments of the reviewers and the primary reasons for the score. This critique should address each of the criteria and highlight the strengths and weaknesses of the application with respect to these criteria.

- Special Note (where applicable): This section should include any comments on aspects of the application that are important to the selection official, program official and the contracting officer, but fall outside of the evaluation criteria, such as environmental or human subjects concerns. This section should also identify any unusual rating or scoring issues, such as a wide variance in individual ratings (e.g., overall ratings of 10, 8, and 0).
- Recommendation

Ranking Sheet: A recommended Merit Review Ranking Sheet Format is provided at Appendix E. The Merit Review Chair or official responsible for the review must prepare a matrix which ranks the applications reviewed by scores, if appropriate. The application with the highest score will be ranked number one. The ranking sheet and the individual summary statements will be provided to the selection official and the official reviewing the program policy factors. The ranking sheet should include the Solicitation/Program Rule number and the following information for each applicant:

- Applicant's name
- Project Title
- Project Period
- Proposed Budget
- Score

GLOSSARY

Application: A written request for financial assistance.

Award: The written document executed by a DOE Contracting Officer, after an application is approved, which contains the terms and conditions for providing financial assistance to the recipient.

Discretionary Award: An award under authority of a Federal statute that permits DOE to exercise judgment in selecting the recipient and the project to be supported and in determining the amount of the award.

Financial Assistance: Transfer of money or property to a recipient or subrecipient to accomplish a public purpose of support or stimulation authorized by Federal statute through grants or cooperative agreements and subawards. In DOE, it does not include direct loans, loan guarantees, price guarantees, purchase agreements, Cooperative Research and Development Agreements (CRADAs), or any other type of financial incentive instrument.

Merit Review: A thorough, consistent, and objective examination of applications based on pre-established criteria by persons who are independent of those submitting the application and who are knowledgeable in the field of endeavor for which support is requested.

Narrative Critique: Written comments on the strengths and weaknesses of an application/proposal with respect to each of the evaluation criteria.

Principal Investigator: The researcher, scientist, or other individual designated by the recipient to direct the research and development aspect of the project.

Program Official: The person responsible for managing the financial assistance program.

Program Policy Factors: Factors that, while not appropriate indicators of the application's merit, are essential to the process of choosing which applications will best achieve the program objectives. For example, program policy factors may reflect the desirability of selecting projects based on geographic distribution, diverse approaches, or complementary efforts. Such factors should be specified in the solicitation or program rule to notify applicants that factors essentially beyond their control will affect the selection process.

Program Rule: A rule issued by a DOE program office for the award and administration of financial assistance which may describe the program's purpose or objectives, eligibility requirements for applicants, types of program activities or areas to be supported, evaluation and selection process, cost sharing requirements, etc. These rules usually supplement the generic policies and procedures for financial assistance contained in 10 CFR 600.

Ranking Sheet: A chart which ranks the applications reviewed by merit review scores from the highest to the lowest.

Renewal Award: An award which adds one or more additional budget periods to an existing project period. The project period is the total period of time indicated in an award during which DOE expects to provide financial assistance.

Score: The consolidated number or adjective that reflects the overall judgment of scientific/technical merit of all the merit reviewers of a specific application. For example, the score may be the average rating, totaled ratings of a set of individual reviewers, or the overall consensus rating of a set of reviewers.

Solicitation: A document which requests the submission of applications for financial assistance and which describes program objectives, recipient and project eligibility requirements, desired performance activity, evaluation criteria, award terms and conditions, and other relevant information about the financial assistance opportunity.

Summary Statement: The official merit review record of a financial assistance request for support. It contains the reviewers' assessment of the scientific/technical merit of the application.

Unsolicited application/proposal: A written request for DOE support of a project which is submitted without a solicitation made by DOE.

U.S. DEPARTMENT OF ENERGY

CONFLICT-OF-INTEREST/NON-DISCLOSURE CERTIFICATE

For

Merit Reviewers Involved in the Selection of
Financial Assistance Applications or Unsolicited Proposals

The Department of Energy has a policy that individuals with a conflict of interest cannot participate in the merit review of a financial assistance application. This certification must be completed by individuals prior to their participation in the merit review process.

1. I will not participate in the review of any financial assistance application involving a particular matter that would have a direct and predictable effect on any person, company or organization with which I have a relationship, financial or otherwise. For purposes of this statement, the interests of my spouse, my minor child, my general partner, any organization in which I serve as officer, director, trustee, general partner, or employee, and any person or organization with whom I am negotiating employment, are attributed to me.

2. Further, I will not participate in the review of any financial assistance application involving a particular person or a particular matter that I believe would cause a reasonable person with knowledge of the relevant facts to question my impartiality.

3. Prior to my participation as a merit reviewer, I agree that I will disclose any actual or perceived conflicts of interest that I may have with such duties. In addition, I agree to disclose any actual or perceived conflicts of interest as soon as I am aware of the conflict.

4. I certify that I will not disclose, except pursuant to the order of a court of competent jurisdiction, any information concerning the assessment and analysis or the content of applications/proposals either during the proceedings of the merit review or at any subsequent time, to anyone who is not authorized access to the information by the Department of Energy or by law or regulation, and then only to the extent that such information is required in connection with such person's official responsibilities. Furthermore, I will report to the DOE Official responsible for the process any communication concerning the assessment and analysis or the individuals involved in the assessment and selection and activities directed to me from any source outside this process.

Signature

Date

Printed Name

Note: For Merit Reviewers who are Federal employees, the same conflict of interest statutes and regulations that apply to you in your regular Government employment apply to you as participants in the review of a financial assistance application.

Appendix C

RATING PLAN FOR NONCOMPETITIVE APPLICATIONS AND UNSOLICITED PROPOSALS

Noncompetitive applications and unsolicited proposals will be evaluated in accordance with the following procedures:

Noncompetitive Financial Assistance Determination

Prior to initiating a merit review of a noncompetitive financial assistance application, the program official must determine that the application satisfies one or more of the selection criteria set forth in 10 CFR Part 600.6(c). This determination must be approved by the individuals identified in 10 CFR Part 600.6(d). If the proposal is accepted as an unsolicited proposal, the conditions set forth in 10 CFR Part 600.6(c)(7) must be satisfied.

Official Responsible for the Review: The official responsible for the review must:

- Select qualified reviewers.
- Obtain a conflict of interest/non-disclosure certificates from each merit reviewer prior to beginning the review.
- Ensure that the reviewers have a copy of this rating plan and understand the process, their role, and the criteria upon which the applications are to be evaluated.
- Provide reviewers copies of the applications and instructions for protecting and returning them.
- Ensure that each reviewer follows this rating plan and provides a sound, well documented evaluation.
- Record the individual ratings and calculate the score.
- Prepare a summary statement for the application/proposal, which summarizes the evaluation and the recommendations of the individual merit reviewers.
- Maintain all merit review documentation.

Evaluation Criteria: The application/proposal will be evaluated in accordance with the following three criteria:

1. **Significance:** The extent to which the project, if successfully carried out, will make an important and/or original contribution to the field of endeavor.
2. **Approach:** The extent to which the concept, design, methods, analyses, and technologies are properly developed, well-integrated, and appropriate to the aims of the project.
3. **Feasibility:** The likelihood that the proposed work can be accomplished within the proposed budget by the investigators or the technical staff, given their experience and expertise, past progress, available resources, institutional/organizational commitment, and (if appropriate) access to technologies.

Rating Scale and Definitions: Reviewers will use the following numerical scale to rate the applications/proposals:

<u>Rating</u>	<u>Adjective</u>	<u>Definition</u>
5	Excellent	Outstanding application/proposal in all respects; deserves highest priority for support
4	Very Good	High quality application/proposal in nearly all respects; should be supported if at all possible.
3	Good	A quality application/proposal; worthy of support.
2	Fair	Application/proposal lacking in one or more critical aspects; key issues were not addressed.
1	Poor	Application/proposal has serious deficiencies.
0	Unacceptable	Application/proposal has no merit

Review Process: Each Merit Reviewer must independently review the application/proposal and complete the attached Review Form for Noncompetitive Applications and Unsolicited Proposals. Reviewers should:

- Provide a narrative critique (i.e., written comments) for each of the three evaluation criteria. Reviewers should note any unusually high or low cost-effectiveness under the feasibility criteria.
- Assign a single overall rating of merit; this rating should reflect the overall merit of the application/proposal based on the consideration of the three evaluation criteria.
- If appropriate, comment on aspects of the application/proposal that fall outside the evaluation criteria review (e.g., environmental or human subject concerns).
- Provide a recommendation for funding.
- Provide phone and fax number.
- Sign and date the review form.

Summary Statement: The official responsible for the review must calculate the average rating to determine the applicant's score and prepare a summary statement for each application or proposal in accordance with the requirements of Section IX of the Merit Review Guide. The summary statement is the official merit review record and provides the selection official an assessment of the technical/scientific merit of the application/proposal.

Attachment to Appendix C: REVIEW FORM FOR NONCOMPETITIVE APPLICATIONS AND UNSOLICITED PROPOSALS

**REVIEW FORM FOR
NONCOMPETITIVE APPLICATIONS AND UNSOLICITED PROPOSALS**

Application/Proposal No:

Applicant:

Project Title:

Evaluation Criteria

1. **Significance:** The extent to which the project, if successfully carried out, will make an original and/or important contribution to the field of endeavor.
2. **Approach:** The extent to which the concept, design, methods, analyses, and technologies are properly developed, well-integrated, and appropriate to the aims of the project.
3. **Feasibility:** The likelihood that the proposed work can be accomplished within the proposed budget by the investigators or the technical staff, given their experience and expertise, past progress, available resources, institutional/organizational commitment, and (if appropriate) access to technologies. Note any unusually high or low cost-effectiveness.

Narrative Critique: Provide written comments for each of the evaluation criterion on a separate sheet/sheets. Your specific comments on the proposal's strengths and weaknesses with respect to the evaluation criteria are critical to the evaluation process.

Rating Scale: Assign a single rating that reflects the overall merit of the application/proposal based on your consideration of the three evaluation criteria. Check one:

	<u>Rating</u>	<u>Adjective</u>	<u>Definition</u>
_____	5	Excellent	Outstanding application/proposal in all respects; deserves highest priority for support.
_____	4	Very Good	High quality application/proposal in nearly all respects; should be supported if at all possible.
_____	3	Good	A quality application/proposal; worthy of support.
_____	2	Fair	Application/proposal lacking in one or more critical aspects; key issues were not addressed.
_____	1	Poor	Application/proposal has serious deficiencies.
_____	0	Unacceptable	Application/proposal has no merit.

Appendix C
Attachment - Page 2 of 2

Special Note: If appropriate, provide comments below or on a separate sheet on aspects of the proposal that fall outside of the evaluation criteria review (e.g., environmental or human subjects concerns). Special Note Comments attached: _____ Yes _____ No

Recommendation: Check one.

_____ Fund project.
_____ Fund in part (Describe which part)

_____ Reject
_____ Other (Explain)

Reviewer:

Name:
E-mail Address:
Phone:

Signature _____ Date: _____

SUMMARY STATEMENT FORMAT

Solicitation/Program Rule No:

Applicant:
Application No:
City, State:

Project Title:
Brief Description of Project:
Proposed Budget:

Rating: (Individual rating/ratings or consensus rating/ratings)

Score:

Narrative Critique: (Address each criterion)

Special Note: (Identify unusual rating or scoring issues, such as a wide variance in individual ratings (i.e., overall ratings of 10, 8, and 0). Comments on aspects of the application that fall outside of the evaluation criteria, such as human subject or environmental concerns.

Recommendation: Fund Project _____ Yes; _____ No; _____ Partial (explain)
(In the event there is a lack of unanimity in the individual rating sheets, provide rationale for the recommendation.)

Signature: _____
(Merit Review Chair or Official
Responsible for the Review)

Date: _____

RANKING SHEET FORMAT

Solicitation/Program Rule No:

Applicant*	Project Title	Project Period	Total Proposed Budget	Proposed Budget Year One	Score
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
....					
....					
....					
...					
...					
* List in order of merit review scores from the highest to the lowest					



Headquarters Policy Flash

FLASH 2000-03

DATE: February 16, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

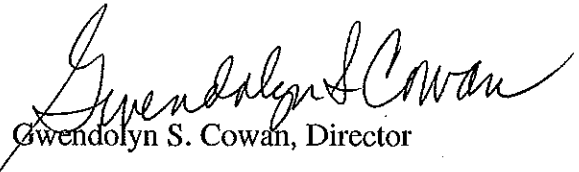
SUBJECT: MAXIMIZING SMALL BUSINESS UTILIZATION

SUMMARY: On December 27, 1999, Richard Hopf sent a letter to all the Procurement Directors advising of recent developments and upcoming challenges in the area of contracting and subcontracting with small businesses, small disadvantaged businesses, including 8(a) firms, woman-owned businesses, and small businesses from Historically Underutilized Business Zones. The letter advised that the Small Business Administration directed a change in the way the Department reports M&O subcontract small business awards. The immediate result of the change will be drastically reduced goals and achievements for the DOE.

FLASH 2000-03

Since that time, a Departmental strategy has been developed to increase small business participation. Attached for your information is a February 11, 2000, letter signed by the Secretary of Energy which announces several new initiatives to enhance DOE's small business program. Also attached is a copy of the press release which was issued on the subject. One of the primary initiatives in the Secretary's plan is the development of a Small Business Committee as part of the Field Management Council. The Committee will report directly to the Secretary and will be co-chaired by James Lewis, Director, Office of Economic Impact and Diversity and Richard Hopf, Director, Office of Procurement and Assistance Management. Committee representation will include program offices, field activities and major contractors.

We will be advising you of further developments as they occur. If you have any questions, please call me at 202-586-8182.



Gwendolyn S. Cowan, Director

cc: Procurement Policy Advisory Group (PPAG)



The Secretary of Energy
Washington, DC 20585
February 11, 2000

**MEMORANDUM FOR HEADS OF ALL DEPARTMENTAL ELEMENTS
AND MAJOR DOE CONTRACTORS**

FROM: BILL RICHARDSON *Bill Richardson*
SUBJECT: Maximizing Small Business Utilization

The Department of Energy is committed to fully engaging small businesses, including small disadvantaged, 8(a), women-owned businesses, and HUBZone small business concerns, in DOE's core missions and programs. In addition, DOE's scientific, technical, and energy and environmental operations provide a unique opportunity for small businesses to engage in interesting and innovative program activities. The Department plays a key role in supporting small business success in technical and energy fields. Likewise, the Department has benefitted from small business innovations.

Recent guidance from the Office of Management and Budget, Office of Federal Procurement Policy, has changed the way the Department reports its prime contract awards to small businesses. This results in a change in the methodology used for compiling small business goals and achievements reported to the Small Business Administration (SBA). We will see a reduction in DOE's small business prime contracting goals; however, the aggregate prime contracting and subcontracting opportunities that DOE provides to small businesses will remain largely unchanged. The Department is proud to provide over \$3 billion in combined prime and subcontracting opportunities to small businesses, including small disadvantaged, women-owned, and HUBZone small business concerns.

I want to see the Department build on this record by setting a combined prime and subcontracting goal of \$3.3B in Fiscal Year 2000, including \$757.6M in prime contracting to small businesses as assigned by SBA. To accomplish this, the Office of Small and Disadvantaged Business Utilization (OSDBU) within the Office of Economic Impact and Diversity (ED), will work with all departmental elements and provide guidance for achieving this goal.

Also, in order to enhance our small business program, I have created a Small Business Committee as part of the Field Management Council. This Committee reports to me and the Deputy Secretary, and is co-chaired by the Director of the Office of Economic Impact and Diversity (ED) and the Director of the Office of Procurement and Assistance Management, and includes representatives from the



program offices, field activities, and major contractors. The Committee will develop and monitor the implementation of small business strategies to maximize small business participation in program activities. Specifically, I am directing this Committee to develop and report to me on the progress of the following initiatives:

- Innovative Opportunities for Small Businesses: All departmental elements will work with ED to maximize small business utilization in their core missions, including contracts, financial assistance, and collaborative research efforts, and develop technical assistance and innovative incubator programs to include small businesses in emerging technologies and disciplines. Departmental elements will develop plans for forging innovative partnerships with small business concerns to afford them an opportunity to become involved in technology transfer and commercialization.
- Procurement Tools and Guidance: The Office of Procurement and Assistance Management will issue additional procurement guidance, identifying tools and techniques to maximize small business participation in the award of both DOE prime contracts and management and operating contract subcontracts. This includes maximizing the use of the 8(a) program, the 8(a) pilot program, the Mentor-Protégé program, and the HUBZone program, as well as anti-bundling policies.
- Enhancing the Small Business Program: The OSDDBU office will develop a new policy for the conduct of their operations. This includes improving the OSDDBU process for reviewing offices' contracts through: 1) increased involvement in acquisition planning and 2) enhanced review of contracts of \$3 million and above. Also, this office will serve as a focal point in tracking major initiatives and announcements by all departmental elements and major contractors, including grants, financial assistance, contracts, technology transfer and collaborative research efforts, and other program activities that have an impact on small business.
- Enhancing Program, Field Office and Contractor Small Business Functions: The Small Business Committee will recommend a structure that will enhance the small business function in all program and field offices and major contracting facilities to strengthen their authority to have an impact on procurement planning and forecasting, and promote small business interests in other collaborative research and partnership efforts. The Committee will identify best practices and explore commercial business models that promote small business advocacy and interaction with the small business community.

- Monitoring and Tracking Prime Contracting and Subcontracting Performance: The Committee will have oversight in the development and reporting of prime and subcontract goals and monitoring the progress in achieving these goals, as well as other collaborative research efforts that impact small business. In addition, the Office of Small and Disadvantaged Business Utilization will develop guidelines for monitoring performance. Also, the Office of Procurement and Assistance Management will enhance the departmental subcontracting reporting system that tracks small business award accomplishments and provides data to determine whether individual contractor goals have been achieved.
- Outreach to Small Business: The Committee will promote innovative outreach initiatives to the small business community, including the establishment of an annual DOE-wide conference to include prime contractors. **I am pleased to announce the next DOE-wide small business conference will be held in April 27-28, 2000, in Denver, CO.** The purpose of the conference is to have ED, OSDBU, program offices, and major contractors educate the small business community about our business lines, forecasts, collaborative research, and other opportunities. In addition, the conference will provide an opportunity to highlight innovative programs and recognize elements that have excelled in meeting small business goals.

The Department has exciting opportunities for small businesses in technical and energy fields that are provided through a variety of mechanisms. Our task is to fully integrate small businesses, including small disadvantaged, 8(a), and women-owned, and HUBZone small business concerns, into program activities. These initial steps are vital to maximizing small business utilization throughout all DOE.

NEWS MEDIA CONTACT:
Guillermo Meneses, 202/586-5806

FOR IMMEDIATE RELEASE
February 14, 2000

SECRETARY RICHARDSON REAFFIRMS DOE'S COMMITMENT TO THE SMALL BUSINESS COMMUNITY

New Strategies to Enhance Small Business Program Will Boost Small Business Participation Throughout the Department.

Secretary of Energy Bill Richardson today announced a number of new steps aimed at increasing small business participation throughout the Department of Energy's (DOE) core missions and programs.

"The department has a strong record of providing opportunities to small business and has benefitted greatly from small business innovations," said Secretary Richardson. "We want to build on our record and forge new innovative partnerships with small business concerns so they can become fully involved in DOE program activities. The department has exciting opportunities for small business in energy, technical, scientific and environmental fields."

Recent guidance from the Office of Management and Budget's Office of Federal Procurement Policy, has changed the methodology used for reporting the department's prime contract awards to small business. This policy change will show a reduction in DOE's small business prime contracting goals this year, due in part to our large subcontracting base and non-profit contracts at some of our labs and sites. Despite the reporting change, the department continues to provide over \$3 billion in combined prime and subcontracting opportunities to small business, including small disadvantaged, 8(a) women-owned businesses and HUBZone small business concerns throughout its core missions and programs.

In order to build on this record, Secretary Richardson set a combined prime contracting and subcontracting goal of \$3.3 billion for Fiscal Year 2000, including the \$757.6 million in prime contracting awards to small business as assigned by the Small Business Administration. In addition, the Secretary also announced several initiatives to maximize small business utilization:

- The creation of a Small Business Committee which reports directly to him and the Deputy Secretary on the development and implementation of innovative programs by

- MORE -

departmental elements and major contractors to promote small participation in DOE's technical, scientific, environmental and energy operations.

- The development of procurement tools and techniques in awarding prime contracts and subcontracts in order to fully engage small business in DOE's core mission areas; including the use of the 8(a), 8(a) pilot, Mentor Protege, and HUBZone programs, as well as anti-bundling policies.
- The development of a new policy to strengthen the small business functions in program, field and major contractor operations, including improved tracking and monitoring mechanisms to measure progress in meeting goals, as well as collaborative research and other initiatives that have an impact on small business.
- The establishment of an annual DOE-wide conference that will bring DOE program offices and major contractors together to better educate the small business community about business lines, forecasts, collaborative research, and other opportunities within the department.

The first DOE-wide Small Business conference will take place in Denver, CO, April 27-28, 2000.

- DOE -



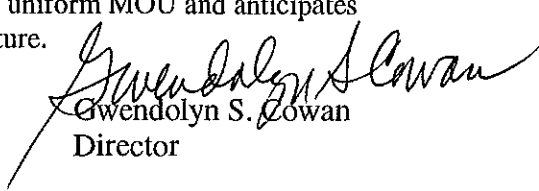
Headquarters Policy Flash

FLASH 2000-04

DATE: February 28, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Extension of 8(a) Program – Memorandum of Understanding

SUMMARY: The Memorandum of Understanding (MOU) between the Small Business Administration (SBA) and DOE governing the 8(a) Program is again being extended to March 10, 2000. The MOU allows DOE to contract directly with 8(a) firms (see Acquisition Letter 98-09). SBA is pursuing a single government-wide, uniform MOU and anticipates issuing guidance in the very near future.



Gwendolyn S. Cowan
Director



cc:
PPAG Members



Headquarters Policy Flash

FLASH 2000-05

DATE: March 7, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

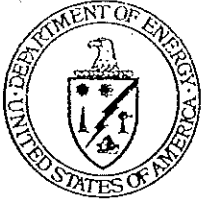
SUBJECT: M&O Contractor Employee Assignments to Washington, DC

SUMMARY: The attached February 8, 2000 memorandum from the Deputy Secretary regarding M&O Contractor Employee Assignments to Washington D.C. is provided for your information and action as appropriate.

M 2 Right for
Gwendolyn S. Cowan
Director

Attachment






The Deputy Secretary of Energy
Washington, DC 20585

MEMORANDUM

February 8, 2000

To: Jim Decker, Acting Director for the Office of Science
Tom Gioconda, Acting Assistant Secretary for Defense Programs
Carolyn Huntoon, Assistant Secretary for Environmental Management

From:  T.J. Glauthier, Deputy Secretary

Subject: M&O Contractor Employee Assignments to Washington D.C.

The FY 2000 Energy and Water Development Appropriations Conference Report directs the Department to reduce the number of Washington based M&O employees to 270 and to consolidate Washington Contractor offices which have been financially supported by DOE. Currently, 379 employees are assigned to Washington and 13 contractor offices are supported by the Department.

A FY 2000 allocation plan for M&O employee assignments has been developed over the past several months with the Program Offices. The allocations are based on the Programs' technical skill requirement plans, on-going work assignments, and required support for visiting laboratory personnel. The Table included with this memo, establishes the FY 2000 allocations for M&O employee assignments.

You are to direct the Field Office Managers to notify their appropriate contractors to: (1) reassign or terminate the assignment of employees, who are not included on the approved inventory lists within 90 days, or no later than May 15, 2000; and (2) stop claiming all costs associated with these actions immediately upon such reassignment or termination.

DOE Notice 350.5 will be formally amended to state that for costs associated with M&O contractor employees in the Washington DC area to be allowable under their M&O contracts, those employees must be listed on the inventory list. You should direct Field Office Managers to notify the M&O contractors under their cognizance of this change in order that they can be prepared for this formal modification to their contract.

The current lists of approved employees, as well as employees currently in Washington who are not approved, are attached. This inventory will be updated as required by the Contracting Officers who administer the M&O contracts from which new assignments to the Washington area are made. However, Program Offices' allocations are not to be exceeded. Stephen Mournighan of the Office of Procurement and Assistance Management, has the responsibility for addressing issues concerning the maintenance of the M&O data base.

The M&O Office Consolidation Plan proposes the termination of 11 to 12 leases in DC and Germantown, with approved personnel occupying these offices to relocate to the Aerospace Building at 901 D Street SW, to DOE office space, or to a possible second off-site office which may be retained to ensure sufficient space. There will be space at these locations to house any approved personnel, not otherwise located in Forrestal and Germantown, and to provide for conferencing space and space for guest users.

Jim Cayce, of the Office of Procurement and Assistance Management will coordinate the termination/co-location effort and will contact the appropriate parties to discuss termination and move dates, and to assist in developing the requirements for each participating contractor. Office leases should be terminated as quickly as possible with the total co-location effort completed by the end of FY 2000, following which only rent for occupancy at approved office spaces will be an allowable cost. The Department will incur termination costs, but these costs will be substantially offset by the savings afforded by the consolidation. Once total costs are determined, further review will be undertaken to determine cost allocations.

I am also requesting that David Klaus lead an effort to streamline the process for determining the FY 2001 allocations with the participation of the Program Offices. This will include the revision of Notice DOE N 350.5, "Use of Facility Contractor Employees for Services to DOE in the Washington Area".

If you have any questions regarding actions required in this memo, please contact Merna Hurd of my staff.

cc: w/o attachments (inventory)

Ernie Moniz
Gary Falle
Merna Hurd
Mike Telson
David Klaus
John Angell
Brook Anderson
Dan Reicher
David Michaels
Robert Gee
Lawrence Sanchez
Laura Holgate
Bill Magwood
Rose Gottemoeller
Mark Mazur
Gary King



Headquarters Policy Flash

FLASH 2000-06

DATE: March 13, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Notice of Proposed Rulemaking: DEAR 970 Re-write

SUMMARY: The Federal Register today published the proposed DEAR 970 Re-write rulemaking (65 FR 13418). This proposed rule would implement many of the recommendations made by the Office of Procurement and Assistance Policy in its review of the policies and procedures governing the award and administration of M&O contracts. The rule proposes to: streamline the policies, procedures, provisions and clauses applicable to management and operating contracts; eliminate coverage that is obsolete or which

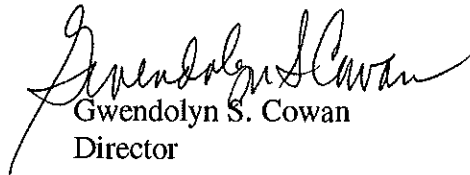
FLASH 2000-06

duplicates the FAR and retain only that coverage which either implements or supplements the FAR for the award and administration of the Department's M&O contracts; add several new clauses; and, amend existing clauses to promote more uniform application of award and administration policies.

The NOPR can be downloaded from the Federal Register's website at:
http://www.gpo.gov/su_docs/aces/aces140.html

Written comments (3 copies) must be submitted no later than May 12, 2000, and should be addressed to: John R. Bashista, Office of Procurement and Assistance Management, Office of Procurement and Assistance Policy (MA-51), Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. For further information, contact John R. Bashista at 202-586-8192, or via e-mail at: john.bashista@pr.doe.gov

In the near future, the Department expects to issue a companion rulemaking to eliminate the majority of DOE-unique cost principles in favor of standard Federal Acquisition Regulation provisions, as well as updated rules on contractor financial management. We intend to finalize both rules together, thereby accomplishing a complete republication of DEAR 970. Questions regarding the Cost Principles Rule should be addressed to Terry Sheppard at (202) 586-8193, or via e-mail at Terry.Sheppard@hq.doe.gov



Gwendolyn S. Cowan
Director

cc: PPAG Members



Headquarters Policy Flash

FLASH 2000-07

DATE: April 5, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Interim Final Rule**

SUMMARY: This Flash transmits: (1) a copy of a common Interim Final Rule which amends the Department of Energy's Financial Assistance Regulations; and (2) a copy of the revised section 600.136. **The Rule is effective April 17, 2000** for new awards.



FLASH 2000-07

A. Amendment

On March 16, 2000, DOE and 14 other federal agencies amended their Financial Assistance regulations to reflect OMB's recent revision to Circular A-110, Section .36 regarding the availability of data produced under an award through the Freedom on Information Act.

B. Summary of Amendment

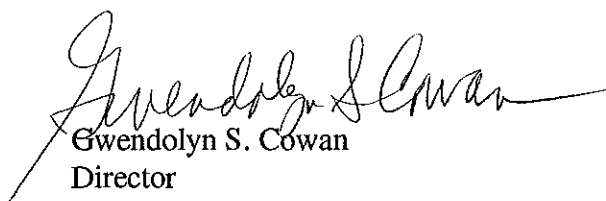
This rule amends Section 600.136, Intangible Property to reflect OMB's recent revision to Circular 1-110, Section _____.36.

Before Circular A-110 was amended, obligations under the Freedom of Information (FOIA) applied only to information that was in the custody of the Government. DOE did not ask a recipient to provide data produced under an award solely for the purpose of responding to an FOIA request. In the future, DOE must request and recipients must provide any published research data that was used by the Federal Government in developing an agency action that has the force and effect of law so that the data can be made available to the public through the FOIA procedures.

If you have any questions related to this issue, please contact Trudy Wood at (202) 586-5625.

2 Attachments:

Federal Register/ Vol. 65, No. 52, March 16, 2000
Amended Section 600.136


Gwendolyn S. Cowan
Director

cc: PPAG Members



Federal Register

Thursday,
March, 16, 2000

Part IV

Department of Agriculture
Department of Energy
National Aeronautics and
Space Administration
Department of Commerce
Department of State
Agency for International
Development
Department of Justice
Department of Labor
Department of Defense
Department of Education
National Archives and
Records Administration
Environmental Protection
Agency
Department of the Interior
Department of Health and
Human Services
Department of
Transportation

Uniform Administrative Requirements for
Grants and Agreements With Institutions
of Higher Education, Hospitals, and Other
Non-Profit Organizations; Final Rule

DEPARTMENT OF AGRICULTURE

7 CFR Part 3019

DEPARTMENT OF ENERGY

10 CFR Part 600

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

DEPARTMENT OF COMMERCE

15 CFR Part 14

DEPARTMENT OF STATE

22 CFR Part 145

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 226

DEPARTMENT OF JUSTICE

28 CFR Part 70

DEPARTMENT OF LABOR

29 CFR Part 95

DEPARTMENT OF DEFENSE

32 CFR Parts 22 and 32

DEPARTMENT OF EDUCATION

34 CFR Part 74

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1210

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 74

DEPARTMENT OF TRANSPORTATION

49 CFR Part 19

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

AGENCIES: Department of Agriculture, Department of Energy, National Aeronautics and Space Administration, Department of Commerce, Department of State, Agency for International Development, Department of Justice, Department of Labor, Department of Defense, Department of Education, National Archives and Records Administration, Environmental Protection Agency, Department of the Interior, Department of Health and Human Services, Department of Transportation.

ACTION: Interim final rule with request for comments.

SUMMARY: This document presents an interim final revision to the agencies' codification of Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." OMB issued a final revision to Circular A-110 on September 30, 1999, as required by Public Law 105-277. It was published in the *Federal Register* on October 8, 1999. The agencies' interim final rules will provide uniform administrative requirements for all grants and cooperative agreements to institutions of higher education, hospitals, and other non-profit organizations.

DATES: This interim final rule is effective April 17, 2000. Comments must be received on or before May 15, 2000.

ADDRESSES: Comments on the interim final rule should be addressed to: Charles Gale, Director, Office of Grants Management, Department of Health and Human Services, Room 517-D, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201. A copy of each communication submitted will be available for public inspection and copying during regular business hours (9:00 a.m.-5:30 p.m. eastern standard time) at the above address. The full text of Circular A-110, the text of the September 30th notice of final revision, and a chart showing where each agency has codified the Circular into regulation may be obtained by accessing OMB's home page (<http://www.whitehouse.gov/omb>), under the heading "Grants Management."

FOR FURTHER INFORMATION CONTACT: For general issues regarding this interim

final rule, please contact Charles Gale, Director, Office of Grants Management, Department of Health and Human Services at (202) 690-6377. For agency-specific issues, please contact the individual noted in that agency's adoption below.

SUPPLEMENTARY INFORMATION:**Background**

Congress included a two-sentence provision in OMB's appropriation for fiscal year 1999, contained in Public Law 105-277, directing OMB to amend Section .36 of Circular A-110 "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act." The provision also provides for a reasonable fee to cover the costs incurred in responding to a request. Circular A-110 applies to grants and cooperative agreements to institutions of higher education, hospitals, and non-profit institutions, from all Federal agencies.

In directing OMB to revise Circular A-110, Congress entrusted OMB with the authority to resolve statutory ambiguities, the obligation to address implementation issues the statute did not address, and the discretion to balance the need for public access to research data with protections of the research process. In developing the revision, OMB sought to implement the statutory language fairly, in the context of its legislative history. This required a balanced approach that (1) furthered the interest of the public in obtaining the information needed to validate Federally-funded research findings, (2) ensured that research can continue to be conducted in accordance with the traditional scientific process, and (3) implemented a public access process that will be workable in practice.

OMB finalized the revision on September 30, 1999 (64 FR 54926, October 8, 1999). Before this, OMB published a Notice of Proposed Revision on February 4, 1999 (64 FR 5684), and a request for comments on clarifying changes to the proposed revision on August 11, 1999 (64 FR 43786). OMB received over 9,000 comments on the proposed revision and over 3,000 comments on the clarifying changes.

This interim final rule amends the agencies' codifications of Circular A-110 so they reflect OMB's recent action.

Under the provisions of section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)), any Department of Housing and Urban Development (HUD) proposed or interim final rule that is issued for

public comment is subject to prepublication Congressional review for a period of 15 days. Therefore, HUD is not joining in today's publication but is adopting the common amendments in a separate rulemaking.

Impact Analysis

Executive Order 12866

This is a significant regulatory action under Section 3(f)(4) of Executive Order 12866, "Regulatory Planning and Review."

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis must be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

The participating agencies certify that this interim final rule will not have a significant impact on a substantial number of small entities. This rule concerns the information that Federally-funded researchers must provide in response to Freedom of Information Act requests.

Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (Public Law 104-4) requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of \$100 million by State, local, Indian Tribal governments or the private sector. Since this interim final rule will not result in expenditures of this magnitude, the participating agencies certify that such statements are not necessary.

Paperwork Reduction Act

The participating agencies certify that this interim final rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) agencies generally offer interested parties the opportunity to comment on proposed regulations before they become effective. However, in this case OMB previously provided the public an opportunity to comment on the revision of Circular A-110, and this regulatory action codifies that revision. Accordingly, while the participating agencies are requesting public comment on this regulatory action, they find that soliciting further

public comment with respect to adopting the revised circular, prior to the adoption becoming effective, is unnecessary and contrary to public interest under 5 U.S.C. 553(b)(B). The regulatory action is therefore being issued as an interim final rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132: Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the participating agencies have determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Text of the Interim Final Rule

The text of the interim final rule appears below:

PART/SUBPART—[AMENDED]

1. Section .36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ .36 Intangible property.

* * * * *

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding

agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

* * * * *

Adoption of Interim Final Rule

The adoption of the interim final rule by the participating agencies, as modified by agency-specific text is set forth below:

DEPARTMENT OF AGRICULTURE

7 CFR Part 3019

FOR FURTHER INFORMATION CONTACT:
Gerald Miske, Fiscal Policy Division,
Office of the Chief Financial Officer,
202-720-1553.

ADDITIONAL SUPPLEMENTARY INFORMATION:
The Department of Agriculture (USDA) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section—.36 regarding the availability of data produced under an award through the Freedom of Information Act into USDA's grants administration regulation at 7 CFR Part 3019. Consistent with this Circular, this rule applies to USDA awards made to institutions of higher education, hospitals, and other non-profit organizations. It also applies to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, and other non-profit organizations.

List of Subjects in 7 CFR Part 3019

Accounting, Colleges and universities, Grant programs—agriculture, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 20, 2000.

Sally Thompson,
Chief Financial Officer.

Dated: January 21, 2000.

Dan Glickman,
Secretary of Agriculture.

For reasons stated in the preamble, the Department of Agriculture amends 7 CFR part 3019 as follows:

**PART 3019—UNIFORM
ADMINISTRATIVE REQUIREMENTS
FOR GRANTS AND AGREEMENTS
WITH INSTITUTIONS OF HIGHER
EDUCATION, HOSPITALS, AND
OTHER NON-PROFIT ORGANIZATIONS**

1. The authority citation for part 3019 continues to read as follows:

Authority: 5 U.S.C. 301.

§ 3019.36 [Amended]

2. Section 3019.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

DEPARTMENT OF ENERGY

10 CFR Part 600

FOR FURTHER INFORMATION CONTACT:
Trudy Wood, Office of Procurement and Assistance Policy (MA-51), U.S.

Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, telephone 202-586-5625.

ADDITIONAL SUPPLEMENTARY INFORMATION:

The Department of Energy (DOE) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section .36 regarding the availability of data produced under an award through the Freedom of Information Act into DOE's assistance regulations at 10 CFR Part 600. Consistent with this Circular and 10 CFR Part 600, this rule applies to DOE awards made to institutions of higher education, hospitals, other non-profit organizations and commercial organizations. The OMB notices in the *Federal Register* soliciting comments on this subject did not address the potential applicability of the revisions to OMB Circular A-110 to commercial organizations. Since the application of OMB Circular A-110 to commercial organizations is optional, 10 CFR 600.136(d) will not apply to commercial organizations.

List of Subjects in 10 CFR Part 600

Accounting, Colleges and universities, Grants programs, Hospitals, Intergovernmental relations, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 21, 2000.

Edward R. Simpson,
Acting Director, Office of Procurement and Assistance Management.

For the reasons stated in the preamble, the Department of Energy amends 10 CFR part 600 as follows:

**PART 600—FINANCIAL ASSISTANCE
RULES**

1. The authority citation for part 600 continues to read as follows:

Authority: 42 U.S.C. 7254, 7256, 13525; 31 U.S.C. 6301-6308, unless otherwise noted.

**Subpart B—Uniform Administrative
Requirements for Grants and
Cooperative Agreements With
Institutions of Higher Education,
Hospitals, Other Non-Profit
Organizations and Commercial
Organizations**

§ 600.136 [Amended]

2. Section 600.136 (.36) is amended as follows:

- a. Paragraph (b) is removed.
- b. Paragraph (a)(2) is redesignated as new paragraph (b) and revised.
- c. Paragraph (a)(3) is redesignated as paragraph (c) and revised as set forth at the end of the common preamble.

d. Newly redesignated paragraph (c) is further amended by removing the phrase "The Federal Government" in the introductory text and adding "DOE" in its place.

e. Paragraph (a)(4) is redesignated as paragraph (e) and the first sentence is revised.

f. Paragraph (a) is revised.

g. Paragraph (d) is added as set forth in the common preamble.

h. New paragraph (d) is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "DOE" in its place and by adding paragraph (d)(3).

The revisions and addition read as follows:

§ 600.136 Intangible property.

(a) Recipients that are institutions of higher education, hospitals, and other non-profit organizations may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes and to authorize others to do so.

(b) In addition to this section, recipients must follow the requirements set forth at 10 CFR 600.27.

* * * * *

(d) * * *

(3) This paragraph (d) applies only to recipients that are institutions of higher education, hospitals, and other non-profit organizations.

(e) For recipients that are institutions of higher education, hospitals, and other non-profit organizations, title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. * * *

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

14 CFR Part 1260

FOR FURTHER INFORMATION CONTACT:
Diane Thompson, Manager, Sponsored Research Business Activity, Code HC, NASA Headquarters, Washington, DC, (202) 358-0514, e-mail: diane.thompson@hq.nasa.gov.

ADDITIONAL SUPPLEMENTARY INFORMATION:
The National Aeronautics and Space Administration (NASA) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section—.36 regarding the availability of data produced under an award through the Freedom of Information Act into NASA's grants

administration regulation at 14 CFR Part 1260. Consistent with this Circular, this rule applies to NASA awards made to institutions of higher education, hospitals and other non-profit organizations.

List of Subjects in 14 CFR 1260

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Recordkeeping and reporting requirements.

Anne Guenther,
Acting Associate Administrator for
Procurement.

For the reasons stated in the preamble, the National Aeronautics and Space Administration amends 14 CFR Part 1260 as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

1. The authority citation for part 1260 is revised to read as follows:

Authority: 42 U.S.C. 2473(c)(1); Pub. L. 97-258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*); and OMB Circular A-110 (64 FR 54926, October 8, 1999).

Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

§ 1260.136 [Amended]

2. Section 1260.136 (—.36) is amended as follows:

- a. Paragraph (c) is revised as set forth at the end of the common preamble.
- b. Paragraphs (d) and (e) are redesignated as paragraphs (e) and (f).
- c. Paragraph (d) is added as set forth at the end of the common preamble.
- d. New paragraph (d) is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "NASA" in its place.

DEPARTMENT OF COMMERCE

15 CFR Part 14

FOR FURTHER INFORMATION CONTACT: Susan L. Sutherland, Director, Office of Executive Assistance Management, Telephone Number 202-482-4115.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Commerce (DoC) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section .36 regarding the availability of data produced under an award through the Freedom of Information Act into DoC's grants administration regulation at 15

CFR Part 14. Consistent with this Circular, this rule applies to DoC awards made to institutions of higher education, hospitals, other non-profit, and commercial organizations. It also applies to such entities if they are recipients of subawards from States, and local and Indian Tribal governments administering programs under DoC awards.

List of Subjects in 15 CFR Part 14

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Susan L. Sutherland,
Director, Office of Executive Assistance
Management.

For the reasons stated in the preamble, the Department of Commerce amends 15 CFR part 14 as follows:

PART 14—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NON-PROFIT, AND COMMERCIAL ORGANIZATIONS

1. The authority citation for part 14 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A-110 (64 FR 54926, October 8, 1999).

§ 14.36 [Amended]

- 2. Section 14.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.
- 3. Section 14.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "DoC" in its place.

DEPARTMENT OF STATE

22 CFR Part 145

FOR FURTHER INFORMATION CONTACT: Georgia Hubert, Director, Federal Assistance Program, Office of the Procurement Executive, U.S. Department of State, Washington, DC 20520, (703) 812-2526.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of State (DOS) is publishing this interim final rule to incorporate the provisions of OMB Circular A-110, Section .36, regarding the availability through the Freedom of Information Act of data produced under an award, into the DOS grants uniform administrative requirements at 22 CFR Part 145. Consistent with this Circular, this rule applies to DOS awards made to

institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards from States, local and Indian Tribal governments administering programs under DOS awards. The OMB notices in the *Federal Register* soliciting comments on this subject did not address the potential applicability of the revisions to OMB Circular A-110 to commercial organizations. Since the application of OMB Circular A-110 to commercial organizations is optional, 22 CFR section 145.36(d)(1) will not apply to commercial organizations.

List of Subjects in 22 CFR Part 145

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 13, 2000.

Lloyd W. Pratsch,
Procurement Executive.

For the reasons stated in the preamble, the Department of State amends 22 CFR part 145 as follows:

PART 145—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

1. The authority citation for part 145 is revised to read as follows:

Authority: 22 U.S.C. 2658.1; OMB Circular A-110 (64 FR 54926, October 8, 1999).

2. Section 145.1 is amended by revising the first sentence to read as follows:

§ 145.1 Purpose.

This regulation establishes uniform administrative requirements for Department of State grants and cooperative agreements awarded to institutions of higher-education, hospitals, other nonprofit organizations, and commercial organizations, except that § 145.36(d)(1) shall not apply to commercial organizations. * * *

§ 145.36 [Amended]

3. Section 145.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

4. Section 145.36 is further amended by adding paragraph (d)(3) to read as follows:

§ 145.36 Intangible property.

* * * * *
(d) * * *

(3) The requirements set forth in paragraph (d)(1) of this section do not apply to commercial organizations.

* * * * *

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 226

FOR FURTHER INFORMATION CONTACT: M/OP/P, Diana Esposito, Procurement Analyst, U.S. Agency for International Development, Room 7.08-105, M/OP/P, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20523-7801, Telephone (202) 712-4163, FAX (202) 216-3395.

List of Subjects in 22 CFR Part 226

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Agency for International Development amends 22 CFR part 226 as follows:

PART 226—ADMINISTRATION OF ASSISTANCE AWARDS TO U.S. NON-GOVERNMENTAL ORGANIZATIONS

1. The authority citation for part 226 continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

§ 226.36 [Amended]

2. Section 226.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

Dated: January 27, 2000.

Rodney W. Johnson,
Director, Office of Procurement.

DEPARTMENT OF JUSTICE

28 CFR Part 70

[A.G. Order No. 2289-2000]

FOR FURTHER INFORMATION CONTACT: Cynthia J. Schwimer, Comptroller & Chief Financial Officer, Office of Justice Programs, U. S. Department of Justice, (202) 307-0623.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Justice (Department) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section—.36 regarding the availability of data produced under an award through the Freedom of Information Act into the Department's grants administration

regulation at 28 CFR Part 70. Consistent with this Circular, this rule applies to awards made by the Department to institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards from States, and local and Indian Tribal governments administering programs under Departmental awards.

List of Subjects in 28 CFR Part 70

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: February 24, 2000.

Janet Reno,
Attorney General.

For the reasons stated in the preamble, the Department of Justice amends 28 CFR part 70 as follows:

PART 70—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS (INCLUDING SUBAWARDS) WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for part 70 is revised to read as follows:

Authority: 5 U.S.C. 301; the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.* (as amended); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.* (as amended); Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.* (as amended); 18 U.S.C. 4042, 4351-4353; OMB Circular A-110 (64 FR 54926, October 8, 1999).

§ 70.36 [Amended]

2. Section 70.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

3. Section 70.36 is further amended by removing the phrase "Federal Government" in paragraph (c) introductory text and adding "Department" in its place.

4. Section 70.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "Departmental awarding agency" in its place.

DEPARTMENT OF LABOR

29 CFR Part 95

FOR FURTHER INFORMATION CONTACT: Comments specific to the Department of Labor may be directed to Phyllis R.

McMeekin, Office of the Acquisition Advocate, 202-219-9174, [fax 202-219-9440]. Mailing address: U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5425, Washington, DC 20210.

ADDITIONAL SUPPLEMENTARY INFORMATION:

The Department of Labor (DOL) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section .36 regarding the availability through the Freedom of Information Act of data produced under an award into DOL's grants administration regulation at 29 CFR Part 95. Consistent with this Circular, this rule applies to DOL awards made to institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards as indicated in Subpart 95.5. The OMB notices in the **Federal Register** soliciting comments on this subject did not address the potential applicability of the revisions to OMB Circular A-110 to commercial organizations. Since the application of OMB Circular A-110 to commercial organizations is optional, 29 CFR § 95.36(d)(1) will not apply to commercial organizations.

List of Subjects in 29 CFR Part 95

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 27, 2000.

Alexis M. Herman,
Secretary of Labor.

For the reasons stated in the preamble, the Department of Labor amends 29 CFR part 95 as follows:

PART 95—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS, AND WITH COMMERCIAL ORGANIZATIONS, FOREIGN GOVERNMENTS, ORGANIZATIONS UNDER THE JURISDICTION OF FOREIGN GOVERNMENTS, AND INTERNATIONAL ORGANIZATIONS

1. The authority citation for part 95 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A-110 (64 FR 54926, October 8, 1999); Secretary of Labor's Order 4-76.

§ 95.36 [Amended]

2. Section 95.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

3. Section 95.36 is further amended by removing the phrase "The Federal Government" in paragraph (c) introductory text, and adding "DOL" in its place.

4. Section 95.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears, and adding "DOL" in its place.

DEPARTMENT OF DEFENSE

32 CFR Parts 22 and 32

FOR FURTHER INFORMATION CONTACT:

Mark Herbst, Office of the Deputy Under Secretary of Defense (Science and Technology), 3080 Defense Pentagon, Washington, D.C. 20301-3080.

ADDITIONAL SUPPLEMENTARY INFORMATION:

The Department of Defense (DoD) adopts two interim final amendments to the DoD Grant and Agreement Regulations (DoDGARs). These amendments apply to awards made on or after the effective date of this regulatory change.

The principal amendment is to section 32.36 of Part 32 of the DoDGARs, which is the DoD's

implementation of OMB Circular A-110. In adopting this amendment, the Office of the Secretary of Defense, the Military Departments and the Defense Agencies will maintain uniform policies on access to data produced under awards to universities and nonprofit organizations that are consistent with the policies of other Executive Departments and Agencies.

The other amendment is to Appendix C of Part 22 of the DoDGARs, to conform that appendix to the revised section 32.36 of Part 32. The change is to delete language advising DoD grants officers that an issue to be addressed in award terms and conditions is whether to waive the Government's access rights to data produced under awards. With the revision to section 32.36 of part 32, that no longer is an option. Two other technical corrections are made to the appendix, to correct citations to sections of the DoDGARs.

List of Subjects

32 CFR Part 22

Accounting, Grant programs—education, Reporting and recordkeeping requirements.

32 CFR Part 32

Accounting, Administrative practice and procedure, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of Defense amends Subchapter B of Chapter I of Title 32 of the Code of Federal Regulations as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

2. Appendix C to Part 22 is revised to read as follows:

BILLING CODE 3410-KS, 6450-01, 7510-01, 3510-FA, 4710-05, 6110-01, 4410-18, 4510-23, 5001-10, 4000-01, 7515-01, 6560-50, 4310-RF, 4150-24, 4910-62-P

Appendix C to Part 22—Administrative Requirements and Issues to be Addressed in Award Terms and Conditions

REQUIREMENT, IN BRIEF	SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND)			ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS
	University or other nonprofit	Governmental entity	For-profit entity	
Standards for Financial Management Systems. Recipients' systems to comply with:	32 CFR 32.21	32 CFR 33.20	32 CFR 34.11	For university, nonprofit, or for-profit entity, specify if want: • Bonding and insurance [32 CFR 32.21(c) or 32 CFR 34.11(b)]. • Fidelity bond [32 CFR 32.21(d) or 32 CFR 34.11(c)]. Specify: • Payment method (e.g., advance, reimbursement, working capital advance). NOTE: If predetermined payment schedule is used, must specify means to ensure that recipients don't develop large cash balances well in advance of needs for such funds (e.g., recipient submits SF-269 or SF-270 forms at regular intervals, for grants officer to review recipients' cash on hand). • Name/address of office to which recipient sends payment requests. • How frequently recipient may submit payment requests. • Whether recipient requests payment by SF-270, SF-271, or other form, or by electronic means (e.g., electronic data interchange). • Name/address of office that will make payments, and whether the recipient is to receive payments by electronic funds transfer (see §22.605(c) and §22.810(b)(2)). • Name/address of office to which recipient is to remit any interest earned, if advance payment method is to be used. If interest is to be remitted using electronic commerce, information should be provided on required format and data elements.
Allowable costs. Allowability of costs to be in accordance with:	32 CFR 32.27 and 32.28	32 CFR 33.21, 33.41(d) and (e)	32 CFR 34.12	
Fee/profit. None allowed.				
Cost share or match. If cost share or match is required, allowability and valuation are governed by:	32 CFR 32.23	32 CFR 33.24	32 CFR 34.17 32 CFR 34.18 32 CFR 34.13	Specify if want to allow inclusion of certain types of items as cost share or allow them to be valued in certain ways [32 CFR 32.23(b), (c), and (g); 32 CFR 33.24(b)(4), (b)(5), and (e)(2); 32 CFR 34.13(a)(7), (b)(1), and (b)(4)(B)].

REQUIREMENT, IN BRIEF	SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND)			ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS
	University or other nonprofit	Governmental entity	For-profit entity	
<u>Program income.</u> Recipients account for program income in accordance with:	32 CFR 32.24	32 CFR 33.25	32 CFR 34.14	Specify: <ul style="list-style-type: none"> Method for disposition [32 CFR 32.24(b), (c), and (d); 32 CFR 33.25(g); 32 CFR 34.14(d), (e), and (f)]. If want recipient to have obligation to Government for certain types of income or for income earned after end of project period [32 CFR 32.24(e) and (h), 32 CFR 33.25(a), (d), (e), and (h), 32 CFR 34.14(b)]. If want to allow recipient to deduct costs of generating income [32 CFR 32.24(f), 32 CFR 33.25(c), 32 CFR 34.14(c)].
<u>Revision of budget/program plans.</u> Recipients request prior approval for plan changes, in accordance with:	32 CFR 32.25	32 CFR 33.30	32 CFR 34.15	Specify if wish to: <ul style="list-style-type: none"> Waive some prior approvals that are optional, but are in effect unless specifically waived [32 CFR 33.30(b), (c)(1), (d)(3); 32 CFR 34.15(c)(2)]. Require some prior approvals that are optional, but are only in effect if specifically stated [32 CFR 32.25(c)(5), (d), (e), (h); 32 CFR 34.15(c)(3)]. Waive the requirement for prior approval [32 CFR 25.25(d)(3)] for recipient to initiate one-time, no-cost extension, as long as the DoD Component judges that the recipient's doing so would not cause the DoD Component to fail to comply with DoD funding policies (e.g., the incremental programming and budgeting policy for research funding) contained in Volume 2A of the DoD Financial Management Regulation (DoD 7000.14-R).
<u>Audit.</u> Recipients periodically to have independent, financial and compliance audit and report to DoD, subject to provisions of:	32 CFR 32.26	32 CFR 33.26	32 CFR 34.16	Require all but for-profit entities to submit copy of OMB Circular A-133 audit reports to IG, DoD. Require for-profit entities to submit audit reports to whichever office(s) the DoD Component wishes audit reports to be sent.
<u>Procurement.</u> Recipients' systems for acquiring goods and services under awards are to comply with:	32 CFR 32.40 through 32.49	32 CFR 33.36	32 CFR 34.30 through 34.31	Specify if want to require recipient to make certain preaward documents available for DoD Component's review [32 CFR 32.44(e); 32 CFR 33.36(g); 32 CFR 34.31(b)].

REQUIREMENT, IN BRIEF	SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND)			ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS
	University or other nonprofit	Governmental entity	For-profit entity	
<u>Subawards.</u> Recipients flow down requirements to subawards in accordance with:	32 CFR 32.5, 32 CFR 33.37, and 32 CFR 34.1(b)(2)			
<u>Property.</u> Recipients manage in accordance with:	32 CFR 32.30 through 32.37	32 CFR 33.31 through 33.34	32 CFR 34.20 through 34.25	Specify if want: <ul style="list-style-type: none"> To allow for-profit entities to acquire real property under awards [32 CFR 34.21(a)]. University or other nonprofit to have any further obligation to Government for exempt property [32 CFR 32.33(b)]. To retain right to transfer title [32 CFR 32.34(h), 32 CFR 33.32(g)]. To allow recipients to use equipment for certain purposes [32 CFR 32.34(d) and (e), 32 CFR 33.32(c)(4), 32 CFR 34.21(d)]. To waive data rights [32 CFR 34.25(b)(2)]. To require recipients to record liens [32 CFR 32.37]. For research awards to certain recipients, include patents clause required by 37 CFR 401 [32 CFR 32.36(b), 32 CFR 34.25(a)]. Specify: <ul style="list-style-type: none"> When recipients are to submit periodic and final performance reports [32 CFR 32.51(b) and (c), 32 CFR 33.40(b), (c), and (f), 32 CFR 34.41]. Frequency of financial status/cash transaction reports [32 CFR 32.52(a)(1)(iii) and (a)(2)(iv); 32 CFR 33.41(b)(3) and (c); 32 CFR 34.41], or if wish to waive them under certain conditions [32 CFR 32.52(a)(1)(i) and (a)(2)(v); 32 CFR 33.41(a)(6); 32 CFR 34.41]. Whether want reports on cash or accrual basis [32 CFR 32.52(a)(1)(ii), 32 CFR 33.41(b)(2), 32 CFR 34.41].
<u>Reports.</u> Requirements are specified in:	32 CFR 32.51 and 32.52	32 CFR 33.40 and 33.41	32 CFR 34.41	
<u>Records.</u> Retention and access requirements specified in:	32 CFR 32.53	32 CFR 33.42	32 CFR 34.42	

REQUIREMENT, IN BRIEF	SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND)			ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS
	University or other nonprofit	Governmental entity	For-profit entity	
Termination and enforcement. Award is subject to:	32 CFR 32.61 and 32.62	32 CFR 33.43 and 33.44	32 CFR 34.51 and 34.52	
Disputes, claims, and appeals. Procedures are specified in:		32 CFR 22.815		<ul style="list-style-type: none"> • Include term or condition that incorporates procedures, in accordance with 32 CFR 22.815(a).
After-the-award requirements. Closeout, subsequent adjustments, continuing responsibilities, and collection of amounts due are subject to requirements in:	32 CFR 32.71 through 32.73	32 CFR 33.50 through 33.52	32 CFR 34.61 through 34.63	

BILLING CODE 3410-KS, 6450-01, 7510-01, 3510-FA, 4710-05, 8118-01, 4410-18, 4510-23, 5001-10, 4000-01, 7515-01, 8580-50, 4310-RF, 4150-24, 4910-62

PART 32—[AMENDED]

3. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 32.36 [Amended]

4. Section 32.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

5. Section 32.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears, and adding "DoD Component that made the award" in its place.

Dated: January 25, 2000.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

DEPARTMENT OF EDUCATION

34 CFR Part 74

FOR FURTHER INFORMATION CONTACT:

Arthur Stewart. Telephone: (202) 708-7049. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1-800-877-8339. Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

ADDITIONAL SUPPLEMENTARY INFORMATION:

The Department of Education (ED) publishes this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section .36 regarding the availability of data produced under a grant award through the Freedom of Information Act into ED's grants administration regulations at 34 CFR Part 74. Consistent with the Circular, this rule applies to ED grant awards made to institutions of higher education, hospitals and other non-profit organizations. It also applies to those entities if they are recipients of subawards from States, and local and Indian Tribal governments administering programs under ED awards.

Invitation to Comment: In addition to any comments submitted to Charles Gale at the U.S. Department of Health and Human Services, we invite you to submit comments regarding ED's specific implementation of these interim final regulations to Arthur Stewart, Department of Education, room 3652,

ROB-3, Seventh and D Streets, SW., Washington, DC 20202-4248.

During and after the comment period, you may inspect public comments submitted to ED about its specific interim final regulations in room 3652, ROB-3, Seventh and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these interim final regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205-8113 or (202) 260-9895. If you use a TDD, you may call the Federal Information Relay Service at 1-800-877-8339.

Assessment of Educational Impact: Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to this Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: <http://ocfo.ed.gov/fedreg.htm>, and <http://www.ed.gov/news.html>

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

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List of Subjects in 34 CFR Part 74

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 24, 2000.

Richard W. Riley,
Secretary of Education.

For the reasons stated in the preamble, the Secretary of Education amends 34 CFR part 74 as follows:

PART 74—ADMINISTRATION OF GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for part 74 continues to read as follows:

Authority: 20 U.S.C. 1221e-3, 3474; OMB Circular A-110, unless otherwise noted.

§ 74.36 [Amended]

2. Section 74.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

3. Section 74.36 is further amended by removing the phrase "the Federal awarding agency" in paragraph (d)(1) each time it appears and adding "ED" in its place.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1210

FOR FURTHER INFORMATION CONTACT:

Nancy Allard at 301-713-7360, extension 226 or by fax at 301-713-7270.

ADDITIONAL SUPPLEMENTARY INFORMATION:

The National Historical Publications and Records Commission (NHPRC) is the grant-making component of the National Archives and Records Administration (NARA). The NHPRC makes grants to state and local archives, colleges and universities, libraries, historical societies, and other nonprofit organizations in the U.S. to help identify, preserve, and provide public access to records, photographs, and other materials that document American history. We are publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section .36 regarding the availability of data produced under an award through the Freedom of Information Act into our NHPRC grants administration regulation at 36 CFR Part 1210.

List of Subjects in 36 CFR Part 1210

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 11, 2000.

John W. Carlin,

Archivist of the United States.

For the reasons stated in the preamble, the National Archives and Records Administration amends 36 CFR part 1210 as follows:

PART 1210—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for part 1210 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A-110 (64 FR 54926, October 8, 1999).

§ 1210.36 [Amended]

2. Section 1210.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding new paragraph (d) as set forth at the end of the common preamble.

3. Section 1210.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "NHPRC" in its place.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

FOR FURTHER INFORMATION CONTACT:

Alexandria Mincey, Grants Administration Division, Policy, Information and Training Branch, 1300 Pennsylvania Avenue, NW (3903R), Fifth Floor, Room 51288, Washington, DC 20004, (202) 564-5371.

ADDITIONAL SUPPLEMENTARY INFORMATION:

The Environmental Protection Agency (EPA) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section .36 regarding the availability of data produced under an award through the Freedom of Information Act into EPA's grants administration regulation at 40 CFR Part 30. Consistent with this Circular, this rule applies to EPA assistance awards made to institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards from States, local and Indian Tribal governments under EPA awards.

The Agency will implement a process for determination, assessment, collection, and reimbursement of recipients' costs.

List of Subjects in 40 CFR Part 30

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit

organizations, Reporting and recordkeeping requirements.

Dated: January 13, 2000.

Carol M. Browner,

Administrator of the Environmental Protection Agency.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR Part 30 as follows:

PART 30—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

1. The heading for part 30 is revised to read as set forth above.

2. The authority citation for part 30 is revised to read as follows:

Authority: 7 U.S.C. 135 *et seq.*; 15 U.S.C. 2601 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 241, 242b, 243, 246, 300f, 300j-1, 300j-2, 300j-3, 1857 *et seq.*, 9601 *et seq.*, 7401 *et seq.*, 9601 *et seq.*; OMB Circular A-110 (64 FR 54926, October 8, 1999).

§ 30.36 [Amended]

3. Section 30.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

4. Section 30.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "EPA" in its place.

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

FOR FURTHER INFORMATION CONTACT:

Debra E. Sonderman, (Director, Office of Acquisition and Property Management), (202) 208-6431.

ADDITIONAL SUPPLEMENTARY INFORMATION:

The Department of the Interior (DOI) has implemented OMB Circular A-110 at 43 CFR Part 12, Subpart F. There is also a provision at 43 CFR Part 12, Subpart A, Section 12.2(a) which confirms that grants and cooperative agreements which are awarded by DOI to institutions of higher education, hospitals and other non-profit organizations, are governed by Subpart F and OMB Circular A-110. The regulation at Subpart A documents that OMB Circular A-110 is a part of the regulation as well as any changes made to the Circular and subsequently published in the **Federal Register**. Therefore, awards made by DOI were considered covered on the effective date of the changes published in the revised Circular, November 8, 1999.

In order to amend DOI's codification of the Circular at 43 CFR Part 12, Subpart F, DOI is participating in this joint publication so that the recent revisions made by OMB can be reflected. With the publication of this interim final rule, we are incorporating the provisions of OMB Circular A-110, Section .36 regarding the availability of data produced under an award through the Freedom of Information Act into the implementing regulation at 43 CFR Part 12, Subpart F.

Compliance With Laws, Executive Orders, and Department Policy: In addition to the certifications stated in the general preamble, DOI is including the following statements:

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. No takings of personal property will occur as a result of this rule.

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951 and 512 DM 2), we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on trust resources. This regulation concerns the information that federally-funded researchers must provide in response to Freedom of Information Act requests related to grants and cooperative agreements awarded to institutions of higher education, hospitals, and other non-profit organizations.

List of Subjects in 43 CFR Part 12

Accounting, Administrative practice and procedure, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 13, 2000.

John Berry,

Assistant Secretary-Policy, Management and Budget.

For the reasons set forth in the preamble, the Department of the Interior amends 43 CFR part 12 as follows:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. 252a, 701 *et seq.*; Pub. L. 104–256, 110 Stat. 1396; sec. 501, Pub. L. 105–62, 111 Stat. 1338; sec. 503, Pub. L. 105–62, 111 Stat. 1339; sec. 303, Pub. L. 105–83, 111 Stat. 1589; sec. 307, Pub. L. 105–83, 111 Stat. 1590; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., p. 215; E.O. 12689, 3 CFR, 1989 Comp., p. 235; E.O. 12731, 3 CFR, 1990 Comp., p. 306; E.O. 13043, 62 FR 19217; 3 CFR 1997 Comp., p. 195; OMB Circular A–102; OMB Circular A–110; and OMB Circular A–133.

Subpart F—Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

§ 12.936 [Amended]

2. Section 12.936 (.36) is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 74

FOR FURTHER INFORMATION CONTACT: Charles Gale, Director, Office of Grants Management, 202–690–6377; for the hearing impaired only: TDD 202–690–6415.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) is publishing this interim final rule to incorporate the provisions of OMB Circular A–110, Section —.36, regarding the availability through the Freedom of Information Act of data produced under an award, into the HHS grants administration regulation at 45 CFR Part 74. Consistent with this Circular, this rule applies to HHS awards made to institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards from States, and local and Indian Tribal governments administering programs under HHS awards. We recognize that OMB's notices for public comment regarding this subject did not address the potential applicability to commercial organizations. Since the applicability of OMB Circular A–110 to commercial organizations is optional and 45 CFR

Part 74 includes other special provisions for commercial organizations (Subpart E), we have decided to be consistent with other Federal agencies which have decided not to apply the new provision to commercial organizations.

List of Subjects in 45 CFR Part 74

Accounting, Colleges and universities, Grant programs, Hospitals, Indians, Intergovernmental relations, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 14, 2000.

Donna E. Shalala,
Secretary.

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 74 as follows:

PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS; AND CERTAIN GRANTS AND AGREEMENTS WITH STATES, LOCAL GOVERNMENTS AND INDIAN TRIBAL GOVERNMENTS

1. The authority citation for part 74 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A–110 (64 FR 54926, October 8, 1999).

2. Section 74.1(a)(1) is revised to read as follows:

§ 74.1 Purpose and applicability.

(a) * * *

(1) Department of Health and Human Services' (HHS) grants and agreements awarded to institutions of higher education, hospitals, other nonprofit organizations and only to commercial organizations in instances other than those involving procedures to make data available under the Freedom of Information Act provision set forth in § 74.36(d)(1).

* * * * *

§ 74.36 [Amended]

3. Section 74.36 is amended:

a. By revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

b. By removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "HHS Awarding Agency" in its place.

c. By adding paragraph (d)(3) to read as follows:

§ 74.36 Intangible property.

* * * * *

(d) * * *

(3) The requirements set forth in paragraph (d)(1) of this section do not apply to commercial organizations.

* * * * *

4. Section 74.83 is added to subpart E to read as follows:

§ 74.83 Effect on intangible property.

Data sharing (FOIA) requirements as set forth in § 74.36(d)(1) do not apply to commercial organizations.

DEPARTMENT OF TRANSPORTATION

49 CFR Part 19

FOR FURTHER INFORMATION CONTACT:

Robert G. Taylor, U.S. Department of Transportation, Office of the Senior Procurement Executive, M–62, 400 Seventh Street, S.W., Room 7101, Washington, D.C. 20590, phone (202) 366–4289, fax (202) 366–7510, e-mail robert.g.taylor@ost.dot.gov, for grant related questions. Robert I. Ross, U.S. Department of Transportation, Office of the General Counsel, C–10, 400 Seventh Street S.W., Room 10102, Washington, DC 20590, phone (202) 366–9156, fax (202) 366–9170, email bob.ross@ost.dot.gov, for FOIA related questions.

ADDITIONAL SUPPLEMENTAL INFORMATION:

The Department of Transportation (DOT) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A–110, Section .36 regarding the availability of data produced under an award through the Freedom of Information Act FOIA into DOT's grants administration regulation at 49 CFR Part 19. Additional information has been added to clarify internal DOT procedures for payments made in accordance with the OMB revisions to Section .36 of the Circular.

List of Subjects in 49 CFR Part 19

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Rodney E. Slater,
Secretary of Transportation.

For the reasons stated in the preamble, the Department of Transportation amends 49 CFR part 19 as follows:

**PART 19—UNIFORM ADMINISTRATIVE
REQUIREMENTS FOR GRANTS AND
AGREEMENTS WITH INSTITUTIONS
OF HIGHER EDUCATION, HOSPITALS,
AND OTHER NON-PROFIT
ORGANIZATIONS**

Authority: 49 U.S.C. 322(a).

§ 19.36 [Amended]

2. Section 19.36 is amended by
revising paragraph (c), redesignating
paragraph (d) as paragraph (e), and

adding a new paragraph (d) as set forth
at the end of the common preamble.

[FR Doc. 00-5674 Filed 3-15-00; 8:45 am]

BILLING CODE 3410-KS-P; 6450-01-P; 7510-01-P;
3510-FA-P; 4710-05-P; 6116-01-P; 4410-18-P; 4510-
23-P; 5001-10-P; 4000-01-P; 7515-01-P; 6560-50-P;
4310-RF-P; 4150-24-P; 4910-62-P

1. The authority citation for part 19
continues to read as follows:

SECTION 600.136 AS AMENDED

Sec. 600.136 Intangible property.

(a) Recipients that are institutions of higher education, hospitals, and other non-profit organizations may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions. (See 10 CFR 600.27)

(c) DOE has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, DOE shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force*

and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(3) This paragraph (d) applies only to recipients that are institutions of higher education, hospitals, and other non-profit organizations.

(e) For recipients that are institutions of higher education, hospitals, and other non-profit organizations, title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of DOE. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of Sec. 600.134(g).



Headquarters Policy Flash

FLASH 2000-08

DATE: April 5, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **SMALL BUSINESS CONFERENCE**

SUMMARY: Attached for your information are two letters signed by the Secretary announcing a Department-wide Small Business Conference on *April 25-27, 2000 in Denver, Colorado*. One letter is directed to Departmental Elements and Major Contractors; the second letter is directed to all other invited participants. For the first time the Department is bringing together not only the program and procurement officials throughout the DOE complex, but also the Department's major contractors and representatives from the small business community who are currently doing business with the Department of Energy, or are interested in learning about the many opportunities which are available.

FLASH 2000-08

Please ensure that your major contractors and vendors are aware this important Conference. Reservations must be made by April 14, 2000.

For more information on the conference please view the website at www.oakridge.doe.gov/procurement/small.html, or call Ms. Myrna Turturro, in the Office of Small and Disadvantaged Business Utilization, at (202) 586-2567.



Gwendolyn S. Cowan
Director

2 Attachments
cc:
PPAG Members



The Secretary of Energy

Washington, DC 20585

March 31, 2000

**MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS
AND ALL MAJOR DEPARTMENT OF ENERGY
PRIME CONTRACTORS**

FROM: BILL RICHARDSON *BR*
SUBJECT: First Annual Department-wide Small Business Conference

I am encouraging all departmental offices to assist in the development of and participate in the Department of Energy's (DOE) first annual Small Business Conference, *Partnering to Fuel Energy Innovations*, on April 25-27, 2000, in Denver, Colorado.

I have strongly supported the Department's commitment to engaging small businesses, including small disadvantaged, 8(a), and women-owned businesses, as well as other small business concerns. This commitment calls for coordinating a Department-wide outreach effort to educate the small business community about partnering with DOE, maximizing contracting opportunities and engaging in other scientific and technical collaborations.

The Department plays a key role in helping small businesses succeed in emerging technology and energy disciplines. Similarly, the Department benefits from the creativity and innovation of small businesses. I am committed to ensuring that small businesses are full participants in our scientific and technical work.

The Denver conference is designed to address the interests of the small business community. It provides a vehicle for recognizing small business achievements, as well as a chance to assist small businesses in learning about opportunities to support the Department in emerging technologies and energy disciplines.

Your participation and assistance is a key element to making this first annual conference a success. More information can be found on-line at www.oakridge.doe.gov/procurement/small.html.

I look forward to your full participation.





The Secretary of Energy

Washington, DC 20585

March 31, 2000

Dear Friend:

I am pleased to invite you to attend the Department of Energy's (Department) first annual Small Business Conference, *Partnering to Fuel Energy Innovations*, on April 25-27, 2000, in Denver, Colorado.

The Department has exciting opportunities for small businesses in the areas of science and technology, environmental quality and energy resources. The Department provides over \$3 billion a year in contracting opportunities to small businesses. The Department plays a key role in helping small businesses succeed in emerging technologies and energy disciplines. Likewise, the Department benefits from the creativity and innovations of small businesses.

I am committed to building on this record, by ensuring that small businesses are full participants in our scientific and technical work. The conference will bring together representatives of the Department and our network of National Laboratories and facilities to inform the small business community about our business lines and forecast contracting opportunities, as well as technology transfer and collaborative research opportunities. In addition, the conference will provide an opportunity to engage the small business community in:

- maximizing small business contracting opportunities;
- expanding opportunities for small business in emerging technologies and energy disciplines; and
- recognizing small business achievements

Conference highlights include how to do business with the Department and its Laboratories, available business opportunities, methods of accessing capital, the Mentor-Protege Program, and effective models for small business participation in technology transfer initiatives.

I look forward to seeing you at the conference and encourage you to register on-line for this first annual event for business leaders and associations. Please check our special conference website located at www.oakridge.doe.gov/procurement/small.html or call Ms. Myrna Turturro, Information Management Officer, at (202) 586-2567.

Yours sincerely,

A handwritten signature in black ink, which appears to read "Bill Richardson", is written over a horizontal line.

Bill Richardson



Headquarters Policy Flash

FLASH 2000-09

DATE: April 11, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Federal Acquisition Circular (FAC) 97-16**

SUMMARY: This Policy Flash summarizes the three items included in FAC 97-16, which was published in the Federal Register on March 27, 2000, at 65 FR 16273.

Please note: The effective date and applicability date for each item are noted below in the summary.

A companion document, the Small Entity Compliance Guide (SECG), was published with this FAC. Both the FAC and the SECG are available via the Internet at <http://www.arinet.gov/far>. Contracting personnel should review the details of each item in the full text of the FAC.

FLASH 2000-09

1. Small Business Competitiveness Demonstration Program

Effective Date: March 27, 2000

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after March 27, 2000.)

This interim rule amends FAR Subpart 19.10 to clarify language pertaining to the Small Business Competitiveness Demonstration (Comp. Demo.) Program, consistent with revisions to the Program that were contained in an OFPP and SBA joint final policy directive dated May 25, 1999.

This interim rule -

- ➔ Advises the contracting officer to consider the 8(a) Program and HUBZone Program, in addition to small business set-asides, for acquisitions of \$25,000 or less in one of the four designated industry groups that will not be set aside for emerging small business concerns.
- ➔ Adds FAR 19.1006, Exclusions, to specify acquisitions to which Subpart 19.10 does not apply. None of the Small Business Comp. Demo. policies and procedures apply to orders under the Federal Supply Schedule Program or to contracts awarded to educational and nonprofit institutions or governmental entities.

This interim rule only will affect contracting officers at participating agencies when acquiring supplies or services subject to the procedures of the Small Business Comp. Demo. Program. The participating agencies are: Department of Agriculture; Department of Defense, except the National Imagery and Mapping Agency; **Department of Energy**; Department of Health and Human Services; Department of the Interior; Department of Transportation; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; and National Aeronautics and Space Administration.

Please note: If you have comments on this interim rule, please forward them to Robert Webb, MA-51, telephone no. 202-586-8264, no later than May 5, 2000 for a consolidated DOE response.

FLASH 2000-09

2. Progress Payments and Related Financing Policies

Effective Date: March 27, 2000

Applicability Date: *The FAR coverage, as amended by this rule, is mandatory for solicitations issued on or after May 26, 2000, but contracting officers may, at their discretion, include the clauses and provisions in this rule in solicitations issued before May 26, 2000).*

This final rule revises certain financing policies in FAR Part 32, Contract Financing, and related contract provisions in FAR Part 52.

The rule -

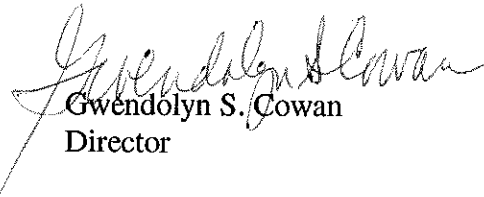
- ➔ Emphasizes that performance-based payments are the preferred method of contract financing. Performance-based payments are contract financing payments made after achievement of predetermined goals, such as performance objectives or defined events. Contracting officers should consider performance-based payments and deem their use impracticable before deciding to provide customary progress payments.
- ➔ Permits contracting officers to provide contract financing on contracts awarded to large businesses if the individual contract is \$2 million or more. Previously, the threshold in the FAR for financing a contract with a large business was \$1 million.
- ➔ Permits a large business to bill the Government for subcontract costs that the large business has incurred but not actually paid, if certain conditions are met. Previously, the FAR permitted only small business concerns to bill for subcontract costs that have been incurred but not paid.
- ➔ Permits the contracting officer to use performance-based payments in contracts for research and development, and in contracts awarded through competitive negotiation procedures.

FLASH 2000-09

3. Technical Amendments

Effective Date: March 27, 2000

These amendments update references and make editorial changes at sections 1.106, 1.201-1, 1.304, 6.305, 9.404, 9.405, 15.404-1, 49.105-2, 52.212-1, 52.217-9, and 52.219-23.



Gwendolyn S. Cowan
Director

cc:
PPAG Members



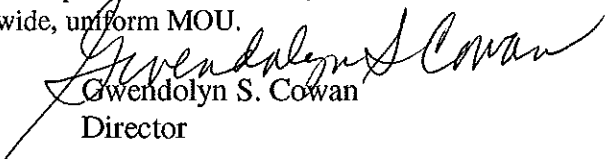
Headquarters Policy Flash

FLASH 2000-10

DATE: April 18, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Extension of 8(a) Program – Memorandum of Understanding

SUMMARY: The Memorandum of Understanding (MOU) between the Small Business Administration (SBA) and DOE governing the 8(a) Program is again being extended to April 30, 2000. The MOU allows DOE to contract directly with 8(a) firms (see Acquisition Letter 98-09). SBA is still pursuing a single government-wide, uniform MOU.



Gwendolyn S. Cowan
Director



cc:
PPAG Members



Headquarters Policy Flash

FLASH 2000-11

DATE: April 20, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Acquisition Letter on Small Business Programs (AL-2000-02)**

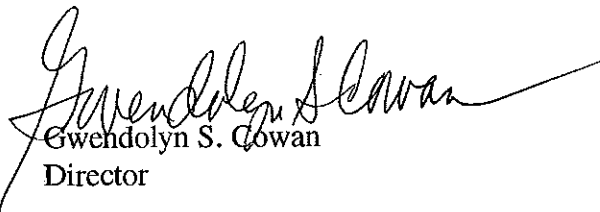
SUMMARY: This Policy Flash transmits the subject Acquisition Letter and is dated April 20, 2000. This AL makes available to DOE contracting officers, and through them to contractors which manage and operate major DOE sites and facilities, guidance and administrative tools to most effectively utilize small businesses, small disadvantaged businesses, including 8(a) contractors, woman-owned businesses, and HUBZone small businesses in the award of DOE prime contracts and subcontracts under contracts for the management and operation of major DOE sites and facilities.

FLASH 2000-11
(April 20, 2000)

The Department's efforts in this regard are in fulfillment of the Federal policies to offer maximum opportunities to small businesses to expand the industrial base and increase competition in the Federal marketplace.

This Acquisition Letter has been reviewed by the Field Management Council and has been approved by the Deputy Secretary for release.

Questions should be directed to Robert Webb of this Office at (202) 586-8264.


Gwendolyn S. Cowan
Director

Attachment

cc:
PPAG Members



**Department of Energy
Acquisition Regulation**

No. 2000-02
Date 04/20/00

ACQUISITION LETTER

The Procurement Executive is issuing this Acquisition Letter through a delegation from the Secretary and under the authority of the Federal Acquisition Regulation (FAR), Section 1.301(a)(2).

Subject: Small Business Programs

References:

FAR Subpart 19.5	Set-Asides for Small Business
FAR Subpart 19.7	Small Business Subcontracting Program
FAR Subpart 19.8	Contracting with the Small Business Administration (the 8(a) Program)
FAR Subpart 19.9	Very Small Business Pilot Program
FAR Subpart 19.10	Small Business Competitiveness Demonstration Program
FAR Subpart 19.11	Price Evaluation Adjustment for Small Disadvantaged Business Concerns
FAR Subpart 19.12	Small Disadvantaged Business Participation Program
FAR Subpart 19.13	Historically Underutilized Business Zone (HUBZone) Programs
DEAR Subpart 919.8	Contracting with the Small Business Administration (the 8(a) Program)
DEAR Subpart 919.5	Set-Asides for Small Business
DEAR Subpart 919.7	Subcontracting with Small Business, Small Disadvantaged Business, and Women-Owned Small Business Concerns
DEAR Subpart 919.70	Mentor Protege Program Guidance
DEAR 970.15407-2	Make or Buy Program
DEAR 970.5204-76	Make or Buy Program
OFPP Letter 99-1	Small Business Procurement Goals

When is this Acquisition Letter (AL) Effective?

This AL is effective 10 business days from the date of issuance.

When Does this AL Expire?

This AL remains in effect until superseded or canceled. This AL supersedes AL 96-07, dated July 24, 1996.

Who is the Point of Contact?

Contact Robert Webb of the Office of Procurement and Assistance Policy at (202) 586-8264, or at Robert.Webb@pr.doe.gov.

Visit our website at www.pr.doe.gov for information on Acquisition Letters and other policy issues.

What is the Purpose of this AL?

The purpose of this AL is to make available to Department of Energy (DOE) contracting officers, and through them to contractors which manage and operate major DOE sites and facilities, guidance and administrative tools to most effectively utilize small businesses, small disadvantaged businesses, including 8(a) contractors, woman-owned businesses, and HUBZone small businesses in the award of DOE prime contracts and subcontracts under contracts for the management and operation of major DOE sites and facilities.

This AL is divided into two parts: Section I applies in the award of prime contracts by DOE; Section II applies to the award of subcontracts under contracts for the management and operation of major DOE sites and facilities.

The Department's efforts in this regard are in fulfillment of the Federal policies to offer maximum practicable opportunities to small businesses to expand the industrial base and increase competition in the Federal marketplace.

What is the Background?

Since 1991 DOE has been advised by the Office of Federal Procurement Policy (OFPP) to include the contracts of its management and operating contractors in establishing goals with the Small Business Administration and reporting of accomplishments for socio-economic programs. This reflected the unique nature and purpose of the management and operating contracts and the fact that approximately three-quarters of DOE's budget goes to those contractors. Recently, the OFPP rescinded its previous direction. As a result, the Department's performance for attaining socioeconomic accomplishments will now be based solely on Federally awarded prime contract awards. For the last four years, the average value of prime contract awards to small businesses represented approximately three percent of DOE's total procurement budget.

Further on October 8, 1999, the Office of Federal Procurement Policy issued Policy Letter 99-1, Small Business Procurement Goals (64 FR 54918), to replace an earlier Policy Letter 91-1. The new Policy Letter establishes Government-wide goals for contracting with small business, small disadvantaged business, women-owned small businesses, and HUBZone small businesses. The aggregate government-wide goal for awards to all small businesses was increased to 23%. The Department needs to exercise all appropriate means to improve its performance in making awards to small businesses in order to help achieve the Government-wide goal to counteract the impact of the recent OFPP decision, and to ensure that small business receives a fair portion of DOE's business.

On February 11, 2000, the Secretary of Energy signed a memorandum providing the Department's strategic vision for maximizing small business participation. One of the significant initiatives announced by the Secretary is the creation of a Small Business Committee as part of the Field Management Council. The Committee reports to the Secretary and the Deputy Secretary and is co-chaired by the Director of the Office of Economic Impact and Diversity, and the Director of the Office of Procurement and Assistance Management. The Secretary has directed the Committee to develop and monitor implementation of small business strategies throughout the DOE complex.

Although the Department has provided over \$3 billion in combined prime and subcontracting opportunities to small businesses, there is more that can be achieved. For fiscal year 2000, the Department's combined prime and subcontracting goal is \$3.3 billion, including \$757.6 million in prime contracting to small business as assigned by the Small Business Administration.

This Acquisition Letter is but one of many initiatives to maximize small business participation. Other initiatives include: (1) developing plans for forging innovative partnerships with small business concerns; (2) improving the conduct of small business programs within the Department; (3) enhancing program, field office and contractor small business functions; (4) improving monitoring and tracking of prime contracting and subcontracting performance; and (5) promoting increased outreach initiatives to the small business community.

Guidance Included in this Acquisition Letter

- I. What Tools Are Available to DOE Contracting Activities to Increase Prime Contract Awards to Small Businesses?**
- A. REVIEW OF EXISTING PROGRAMS/PROCEDURES 5**
- B. INCREASED OUTREACH ACTIVITIES 7**
- C. SMALL BUSINESS REVIEW 7**
- D. CONSOLIDATING REQUIREMENTS 8**
- E. USE OF GSA FEDERAL SUPPLY SCHEDULES 8**
- F. AWARD OF MULTIPLE AWARD CONTRACTS 9**
- II What Tools Are Available to Increase Subcontract Awards to Small Businesses?**
- A. MAKE OR BUY PROGRAM 10**
- B. CONSOLIDATION OF REQUIREMENTS 11**
- C. 8(a) PILOT PROGRAM 11**
- D. DISCRETIONARY CONSTRUCTION CLASS SET-ASIDE 11**
- E. HUBZone SET-ASIDE 11**
- F. SMALL DISADVANTAGED BUSINESS AND WOMAN-OWNED BUSINESS
EVALUATION PREFERENCE 11**
- G. DISCRETIONARY \$100,000 SET-ASIDE FOR SMALL BUSINESS 12**
- H. DOE MENTOR PROTEGE PROGRAM 12**

I. What Tools are Available to DOE Contracting Activities to Increase Prime Contract Awards to Small Businesses?

To support the Department's responsibility to award a fair proportion of DOE prime contract awards to small businesses, Heads of Contracting Activities shall ensure that the following policies and procedures are used to the maximum extent feasible.

A. REVIEW OF EXISTING PROGRAMS/PROCEDURES

AMOUNT	QUICK REFERENCE OF GENERAL SET-ASIDE REQUIREMENTS
< \$2,500	While unrestricted, may be awarded to a single small business. (Micro Purchases)
\$2501-\$100,000	Reserved exclusively for small business and shall be set aside, unless there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns.
> \$100,000	Required small business set-aside where there is reasonable expectation of obtaining offers from two or more responsible small business concerns.

1. **Set-Asides:** The following set-asides are required or authorized by Federal law and/or regulation. Awards made pursuant to these processes fulfill Federal competition requirements.
 - a. *Awards to 8(a) Firms.* For procurements under \$3 million (\$5 million for manufacturing standard industrial classifications) where an 8(a) certified firm can be identified with the expectation that the award would be at a fair market price, an award may be made noncompetitively to an 8(a). If the procurement is valued in excess of \$3 million (\$5 million for manufacturing) and two or more 8(a) firms can be so identified, the procurement should be set aside for competition among 8(a) firms.
 - b. *Memorandum of Understanding between DOE and the Small Business Administration (SBA).* Contracting activities may make awards under the 8(a) program with DOE contracting officers signing on behalf of SBA. This delegated signature authority saves time and effort in completing the award between DOE and SBA and the subcontract between SBA and the selected 8(a) firm (refer to AL-98-09, dated June 26, 1998).

- c. *Set-Asides for Small Business.* Procurements valued in excess of \$2,500 are to be set-aside for competition where there are two or more small businesses available to perform a requirement. This obligation also applies to purchase card transactions.
- d. *Set-Asides for HUBZone Small Business Concerns.* Where there is a reasonable expectation that proposals will be received from two or more small businesses certified as Historically Underutilized Business Zone concerns and the award would be made at a fair market price, the FAR requires that the award be set aside for HUBZone small business concerns.
- e. *Set-Asides for Very Small Businesses.* Under a statutorily directed pilot program purchases valued between \$2,500 to \$50,000 must be set aside for very small businesses (those businesses with no more than 15 employees and average annual receipts not exceeding \$1 million). This pilot program applies to supplies procured by DOE offices located in and to services performed in designated Small Business Administration districts (see FAR 19.902). Within this dollar range, awards may be made still to 8(a) firms that are not very small businesses.
- f. *Targeted Industry Categories Under Small Business Competitiveness Demonstration Program.* DOE is a participating agency and is responsible for increasing small business participation in the following SIC codes: 8731 (AG93, AG13, AZ11, AG83, R415), 4959(F108), 8742(R405), 8732(R419), 3823(7042), and 3825(6625).

2. Other Forms of Preference

- a. *Price Preferences for Small Disadvantaged Businesses.* If a procurement is not otherwise set aside, price preferences may be used to facilitate an award to certified small disadvantaged businesses where the acquisition is for items or services under certain Standard Industrial Codes or HUBZone small business concerns or to a firm that is both. For small disadvantaged businesses the current 10% price preference is known as a "price evaluation adjustment."

For HUBZone small business concerns, the 10% price preference is known as a "price evaluation preference." Where a firm is a HUBZone small business concern that is also a small disadvantaged business competing for work in one of the designated Standard Industrial Codes, it is entitled to the 20% price evaluation preference which results from the combining of these two preferences.

- b. *Evaluation Criterion.* Procurements valued in excess of \$500,000 (\$1,000,000 for construction) conducted under competitive procedures must contain an evaluation criterion or subcriterion to encourage increased subcontracting opportunities for small and small disadvantaged businesses. *Use of this technique is to be applied specifically to DOE major site and facility contracts to encourage small business participation in subcontracts, and also to encourage small business participation as prime contract team members.* A small disadvantaged business that does not claim the price evaluation adjustment is entitled to consideration under this evaluation criterion.

B. INCREASED OUTREACH ACTIVITIES

DOE small business representatives, contracting personnel, and program and technical personnel involved in the acquisition process should maximize the use of the Internet, publication of notices in relevant industry publications, the conducting of educational programs and practical workshops, and use of any other appropriate means to identify and inform small businesses of the work performed by the Department and its contractors. This would include how to do business with DOE, what contracting and subcontracting opportunities are available, how to obtain copies of solicitations, how to respond to DOE solicitations, how to become certified as a small disadvantaged business concern with SBA and any other information that may aid small businesses in competing for and performing contracts for DOE or subcontracts under contracts with DOE.

C. SMALL BUSINESS REVIEW

1. In addition to review of procurements by small business representatives, procurement directors should be personally involved in assessing the potential of setting aside any procurement above the Simplified Acquisition Threshold for small business, 8(a) firms, or HUBZone firms.
2. If a planned procurement valued in excess of \$3 million has not been set-aside for award to a small business, 8(a) firm, or HUBZone firm after the initial review required by FAR 19.501 and the personal review of the Procurement Director, notice shall be provided electronically to the Headquarters Office of Small Disadvantaged Business Utilization (OSDBU). Procurement actions which are supported by a justification and approval for use of other than full and open competition as described in FAR Sections 6.303 and 6.304," do not require OSDBU review.
 - ☛ That notice shall contain the following information: copies of the procurement request and the statement of work; the source list; and a statement of the reason(s) it cannot be set-aside. Certain transactions, e.g., the placing of orders under FSS contracts and the issuance of individual task orders under task order contracts are not subject to this review.

- OSDBU will review or work through the Cognizant Small Business Program Manager within seven (7) business days to challenge the acquisition plan to the cognizant Head of Contracting Activity (HCA). If a notice of challenge is not entered within the that time, or if the Director of the Office of Small and Disadvantaged Business Utilization affirms the decision, the procurement should proceed as originally planned.

- If, however, a challenge is entered, the HCA shall resolve the matter within three (3) business days unless otherwise extended for good cause. At offices where a resident SBA Procurement Center Representative (PCR) resides, the review by OSDBU and the SBA-PCR may be concurrent.

D. CONSOLIDATING REQUIREMENTS

A FAR Interim Rule (FAC 97-15) was published on December 27, 1999 (at 64 FR 72414) to implement statutory controls and SBA regulatory requirements concerning "contract bundling" (i.e., consolidation of requirements – see 64 FR 57366, October 25, 1999). Several new responsibilities have been established and can be found at FAR Parts 7, 10, 15 and 19. While consolidating requirements may be deemed more administratively efficient and may result in cost savings, care needs to be exercised to ensure that the advantages of combining several contract requirements into a single award is balanced against the disadvantages and reduced potential for small business set-asides. For example, "bundled" awards may be appropriate when necessary to support specific technical, quality, or design requirements. However, "bundled" awards may reduce contractor focus, reduce competition in general, and, more specifically, result in fewer competitive opportunities for small businesses.

In those cases in which the requirements are bundled, special attention should be given to the opportunity for small business participation in subcontracting.

- Contracting Officers shall examine any acquisition plan or procurement request which anticipates several small contract requirements being combined into a single large contract, to ensure the proposed award provides a healthy competitive environment to support the Department's small business program objectives.
- Contract requirements should be structured to facilitate competition by and among small business concerns.
- Teaming arrangements for bundled requirements should be encouraged so that small businesses are not excluded from competing as prime contractors.
- If you cannot set aside a consolidated procurement for small business or 8(a) or HUBZone 8(a), rethink your acquisition strategy.

E. USE OF GSA FEDERAL SUPPLY SCHEDULES

The recent changes in policy for the use of the General Service Administration's (GSA) Federal Supply Schedule (FSS) have provided Contracting Officers with potent tools for the streamlined processing of requirements for hundreds of thousands of supplies and, increasingly, services. GSA and SBA have recognized the potential impact of the new schedule procedures on the small business community. *Starting in fiscal year 1999, award of orders under GSA schedules to small businesses are counted as DOE accomplishments for goaling purposes.* These changes also give Contracting Officers an opportunity to provide customers with a simplified and streamlined vehicle for achieving their Small Business Goals. The rules for buying under FSS are in FAR Subpart 8.4. Basically, if an acquisition is expected to exceed the micro-purchase threshold, the Contracting Officer must make a best value award from among at least three schedule contractors.

Although a majority of vendors on the schedules are in fact small business suppliers, the orders placed by Federal agencies with FSS vendors are frequently placed with other than small businesses. While FAR 8.404(a) notes that the small business provisions of Part 19 do not apply *per se* to orders under the schedules, there are additional techniques to increase small business participation which the Department will use when filling requirements from a FSS:

- ☛ To the maximum extent possible, FSS order competitions should be targeted to small business firms. Contracting Officers should work with requestors to identify three or more small businesses that hold relevant FSS contracts.
- ☛ FSS order competitions should be further limited, when appropriate, to specific categories e.g. woman-owned small businesses or small disadvantaged businesses.
- ☛ For micropurchases (orders < \$2,500), small businesses should be targeted. For orders above the micropurchase threshold, competitions should be targeted at small business firms.

F. AWARD OF MULTIPLE AWARD CONTRACTS

Agencies use ID/IQ task order contracts to fill recurring requirements for services. The size and scope of these contracts can present obstacles for small businesses who wish to compete, even though these firms have demonstrated their ability to be competitive in providing professional and technical services. Accordingly, solicitations for multiple award contracts (MACs) should be structured in such a manner that will guarantee small and small disadvantaged business firms an opportunity to win prime contracts, which then will allow them to compete for individual orders under the contracts. The following techniques should be applied when using MACs to fill program requirements:

- Contracting Officers must work closely with program officials and the small business representative regarding the planning of multiple award contracts so small and small disadvantaged business opportunities can be identified early in the acquisition planning process. Business strategies such as teaming arrangements should be discussed in an effort to maximize opportunities for these firms. Teaming arrangements not only increase business opportunities for small and small disadvantaged businesses, but also expand the skill mix of the team.
- Total set-aside: Multiple award contracts should be set-aside exclusively for competition among small businesses, to the greatest extent practicable.
- Partial set-aside: Where a total set-aside is not practicable, consideration should be given to identifying opportunities for an entire component of the statement of work to be set-aside for competition among small businesses.
- Where a total or partial set-aside is not feasible, consideration should be given to reserving and specifying in the solicitation, a certain number of awards for small businesses.

II What Tools are Available to DOE Contractors to Increase Subcontract Awards to Small Businesses?

Heads of Contracting Activities shall ensure that contractor purchasing systems of contractors for the management and operation of major DOE sites and facilities include effective small business advocacy programs to support the Department's responsibility to award a fair proportion of DOE appropriated dollars to small businesses.

Additionally, Contracting Officers should meet periodically with directors of contractor purchasing to review the status of the contractor's performance against its Small Business Subcontracting Plan as implemented by the clause and FAR Subpart 19.7 to ensure the maximum practicable utilization of small businesses in Government contracts, including the contractor's attainment of negotiated subcontracting goals.

Contracting Officers should encourage contractors to adapt the tools in paragraphs B, E, and F of Section I of this Acquisition Letter and to take advantage of the following tools in Section II of this Acquisition Letter:

A. MAKE OR BUY PROGRAM

DOE contractors should use their "Make or Buy" program as a tool to define appropriate opportunities for contracting out work that will not cost more or compromise control of work. Work to be contracted out may lend itself to setting aside opportunities for award to small businesses or 8(a) firms. Contracting Officers will provide a copy of the contractor's "Make or Buy" plan to the DOE Small Business Program Manager.

B. CONSOLIDATION OF REQUIREMENTS

Contracting Officers will assure that the contractor's purchasing system and methods provide for a special internal review of consolidated requirements where it is unlikely that small businesses will be able to compete.

C. 8(a) PILOT PROGRAM

Contractors responsible for the management or operation of DOE sites and facilities are authorized to award subcontracts with a value of \$5 million or less for manufacturing standard industrial classifications and \$3 million or less for all other acquisitions on a noncompetitive basis to firms certified as participants by the Small Business Administration under its 8(a) program. Contractors may also set-aside for competition among 8(a) firms requirements in excess of those thresholds.

If such a program is instituted, the contractor shall assure that awards are to be made at fair market prices and are identified as awards to 8(a) firms under the reporting provisions of the Small Business Subcontracting Plan clause. A special effort may be made to identify and make awards to 8(a) firms in HUBZones. If such a program is instituted, the contractor shall assure that awards are to be made at fair market prices.

D. DISCRETIONARY CONSTRUCTION CLASS SET-ASIDE

Contractors responsible for the management or operation of DOE sites and facilities are authorized to set aside general construction requirements valued at \$3 million or less for small business on a class basis.

E. HUBZone SET-ASIDE

Contractors responsible for the management and operation of DOE sites and facilities are authorized to use HUBZone set aside and HUBZone sole source procurement techniques in the award of subcontracts under conditions similar to those applicable to the award of Federal prime contracts.

F. SMALL DISADVANTAGED BUSINESS AND SMALL WOMAN-OWNED BUSINESS EVALUATION PREFERENCE

Contractors responsible for the management or operation of DOE sites and facilities are authorized provide for an evaluation criterion that reflects a preference in the award of subcontracts to firms that propose to make significant use of small disadvantaged business or small woman-owned business in the performance of the proposed subcontract. Any such representation must be substantiated by a credible plan to establish its validity and may provide for damages for failure to achieve the represented level of involvement.

G. DISCRETIONARY \$100,000 SET-ASIDE FOR SMALL BUSINESS

Contractors responsible for the management and operation of DOE sites and facilities are authorized to set aside purchases valued up to \$100,000 for award to small businesses and to make purchases valued up to \$50,000 on a sole source basis to small businesses. If such programs are instituted, the contractor shall assure that awards are to be made at fair market prices.

H. DOE MENTOR PROTEGE PROGRAM

Contractors responsible for the management and operation of DOE sites and facilities may enter into Mentor-Protege agreement with small businesses, small disadvantaged businesses, including 8(a) concerns, and woman-owned businesses to enhance the commercial viability of such businesses.



Headquarters Policy Flash

FLASH 2000-12

DATE: April 26, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **A. Final Rule - Financial Management Clauses**
B. Final Rule - Mentor Protege Program

SUMMARY: This Policy Flash summarizes two final rules that were published in the Federal Register on Friday, April 21, 2000 (65 FR 21371 and 65 FR 21367). These final rules may be read and printed at the Federal Register homepage at http://www.gpo.gov/su_docs/aces/aces140.html

POLICY FLASH 2000-12 (04/26/00)

A. FINAL RULE -- Financial Management Clauses for Management and Operating (M&O) Contracts

DOE published a final rule on Financial Management Clauses for Management and Operating Contracts in the Federal Register (at 21371 to 21376) on April 21, 2000. This final rule amends the Department of Energy Acquisition Regulation as DOE proposed in its Notice of Proposed Rulemaking published in the Federal Register (at 64024 to 64031) on November 18, 1998. That is, this final rule designates certain management and operating contract clauses and Federal Acquisition Regulation clauses as Standard Financial Management Clauses to be included in management and operating contracts unless the Chief Financial Officer of the Department concurs in a deviation. Additionally, the rule revises several existing financial management clauses and adds other financial management related clauses.

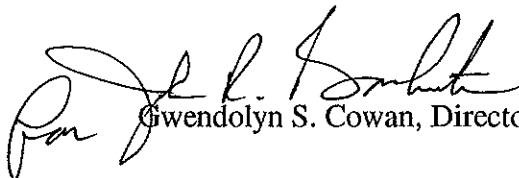
The contracting officer must apply the changes this rule makes to solicitations issued on or after the effective date of this rule and may apply the changes to existing solicitations. Because this rule's changes are already incorporated in the majority of the Department's management and operating contracts, you should incorporate the changes into existing contracts as soon as practicable, but in no case later than one year from the effective date of this rule.

Acquisition Letter (AL) 93-2 has been canceled.

B. FINAL RULE --- Mentor-Protege Program

The Department of Energy Acquisition Regulation is amended to encourage DOE prime contractors to assist 8(a) firms, other small disadvantaged businesses, Historically Black Colleges and Universities and other minority institutions of higher learning, women-owned small businesses and small business concerns owned and controlled by service disabled veterans in enhancing their capabilities to perform contracts and subcontracts for DOE and other Federal agencies, and to succeed in commercial endeavors. The program seeks to accomplish this by fostering long-term business relationships between prime contractors and businesses and institutions of higher learning. The Rule is effective on May 22, 2000. It is not inherently a part of the contract performance of the prime contractor (mentor); however, the Rule contains a solicitation provision to notify prospective offerors of the existence of DOE's Mentor-Protege Program.

The contracting officer must insert the solicitation provision of this rule into solicitations issued on or after the effective date of this rule and may include it in existing solicitations.


Gwendolyn S. Cowan, Director

cc: PPAG Members



Headquarters Policy Flash

FLASH 2000-13

DATE: May 5, 2000
TO: Heads of Contracting Activities and Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Financial Assistance Simplification - Consultation with Partners

SUMMARY: On May 3, 2000, the Deputy Secretary sent a memorandum to the Heads of Departmental Elements regarding the implementation of the Federal Financial Assistance Management Improvement Act (Public Law 106-107). The Deputy Secretary requested their support in soliciting input from DOE's recipient community. Richard is also sending a similar memorandum to request support from the procurement community. The attached memorandum is being forwarded electronically for your information and appropriate action. If you have questions, please contact Trudy Wood at (202) 586-5625.



Gwendolyn S. Cowan, Director


Attachment

**Department of Energy**

Washington, DC 20585

MAY 4, 2000

MEMORANDUM FOR: HEADS OF CONTRACTING ACTIVITIES AND
PROCUREMENT DIRECTORS

FROM: RICHARD H. HOPF, DIRECTOR 
PROCUREMENT AND ASSISTANCE MANAGEMENT

SUBJECT: FINANCIAL ASSISTANCE SIMPLIFICATION -
CONSULTATION WITH PARTNERS

On November 20, 1999, the President signed into law the Federal Financial Assistance Management Improvement Act (Public Law 106-107) whose purposes are to improve the delivery of services to the public and the effectiveness and performance of Federal grant and cooperative agreement programs. Federal agencies are working with OMB to make it easier for State, local, and tribal governments, and nonprofit and commercial organizations to apply for and report on Federal financial assistance.

This memorandum requests your support toward implementation of the law, particularly in soliciting input from our recipient partners. The law requires Federal agencies to work with OMB to: develop uniform administrative rules and common application and reporting systems; replace paper with electronic processing in the administration of grant programs; and identify statutory impediments to program simplification.

OMB requires consultation with the recipient community and considers it an essential step in this simplification effort. Within DOE, our strategy is to make efficient use of the various meetings/forums/seminars/conferences already scheduled over the next several months with all sectors of the recipient community by providing information about the new law and our desire to learn more about the customers' priorities for program simplification.

The attached document, Simplification of Federal Financial Assistance Programs – Consultation with Partners, is a script of information about the new law and the “Opportunity to Comment” available from the DOE Financial Assistance home page. Please share this document with your staff who may be meeting with recipient organizations over the next several months. Comments will go to a special email address: PL106107@pr.doe.gov to be reviewed, analyzed, and summarized for use by the interagency work groups involved in working with OMB to implement the law.

We would appreciate the widest distribution appropriate. If you have any questions about this effort, please contact Trudy Wood at (202) 586-5625. Thank you.

Attachment



SIMPLIFICATION OF FEDERAL FINANCIAL ASSISTANCE PROGRAMS - CONSULTATION WITH PARTNERS

Background

On November 20, 1999, the President signed into law the Federal Financial Assistance Management Improvement Act (Public Law 106-107). The purposes of the Act are to improve the delivery of services to the public and the effectiveness and performance of Federal grant and cooperative agreement programs. Federal agencies are working with OMB to: 1) develop uniform administrative rules and common application and reporting systems; 2) replace paper with electronic processing in administration of these programs; and 3) identify statutory impediments to program simplification.

Consultation with the recipient community is an important part of this simplification effort and a critical step in developing and implementing a work plan by May 2001, as required by this law. Program staff and Contracting Officers are encouraged to bring this Opportunity to Comment to the attention of the recipient community. This may be done during upcoming meetings, conferences, seminars, and forums involving various recipient organizations, or by posting information on other web sites, linked to the DOE Financial Assistance home page.

OPPORTUNITY TO COMMENT:

DOE has a Financial Assistance Internet web site where the public can obtain information related to grants and cooperative agreements. The web site, at <http://www.pr.doe.gov/fahome.html>, highlights an "Opportunity to Comment" on the current financial assistance program simplification effort. Comments should be provided via email to: PL106107@pr.doe.gov. All comments will be reviewed, analyzed, and summarized for use by DOE and the various interagency work groups involved with implementation of the law.

The Opportunity to Comment includes identifying those processes in the financial assistance life cycle that need streamlining or improvement and offering suggestions for achieving improvements. It asks the recipient community 1) to describe what is most important in terms of program simplification; 2) to identify the specific financial assistance programs found to be most burdensome, and 3) to provide details about why they are burdensome. DOE will consider all responses in its simplification effort and provide summaries to the interagency working groups.

The input is valued, and is part of the larger process of achieving the goals the Department and of P. L. 106-107, namely simplification of Federal financial assistance programs for the benefit of our recipients.

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Director, Contracts Management Division, Rocky Flats Office
Director, Contracts Management Division, Savannah River Operations Office
Director, Acquisition & Assistance Division, National Energy Technology Center

[To be posted on DOE's Financial Assistance Home Page, at the top, right under "Last Update: , 2000".]

•Opportunity to Comment – Simplification of Federal Financial Assistance Programs

[This title will link to the following text.]

Opportunity to Comment – Simplification of Federal Financial Assistance Programs

During the last few years DOE has simplified and improved its financial assistance programs by 1) reducing its regulatory requirements by over 50 percent; 2) adopting thoughtful streamlining measures; 3) providing increased opportunities for competition to insure that everyone has an opportunity to participate; and 4) revising its merit review process to promote a more uniform and disciplined approach.

The Department is continuing to investigate opportunities for further improvement. We plan to do this in conjunction with the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106-107). The purposes of this Act are to improve the delivery of services to the public and the effectiveness and performance of Federal grant and cooperative agreement programs. Federal agencies are working with OMB to 1) develop uniform administrative rules and common application and reporting systems; 2) replace paper with electronic processing in administration of these programs; and 3) identify statutory impediments to program simplification.

Consultation with the recipient community is an important part of this simplification effort. We want to know which processes in the financial assistance life cycle need streamlining or improvement and your suggestions for achieving improvements. We need to know what is most important to you, in terms of program simplification. Finally, we want you to identify the specific programs that you find to be most burdensome and provide details about why they are burdensome, so that we can focus our efforts on those programs that are in the greatest need of streamlining.

Please send your comments via email to: PL106107@pr.doe.gov and be sure to include the name of the organization you represent. If you would like to meet with a DOE representative to discuss your ideas, please call Ms. Trudy Wood at (202) 586-5625 to set up an appointment.

Your input is valued and is part of the larger process of achieving the Department's goals and those of Pub. L. 106-107, namely simplification of

Federal financial assistance programs for the benefit of our recipients. Please note that DOE will not respond to the individual comments, but will consider all responses in its efforts to simplify DOE's programs and will provide summaries to the interagency working groups involved with the implementation of the law. Thank you for your participation.



Headquarters Policy Flash

FLASH 2000-14

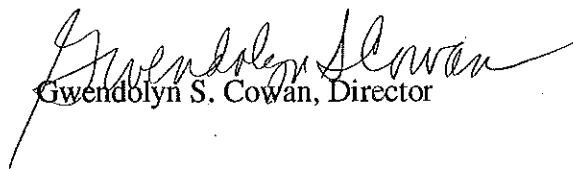
DATE: May 9, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Office of Federal Procurement Policy (OFPP) Determination of
Executive Compensation Benchmark Amount

SUMMARY: The Administrator of OFPP has determined that the "benchmark compensation amount" that is allowable under government contracts is \$353,010 for costs incurred after January 1, 2000. This determination was made pursuant to Section 39 of the OFPP Act (41 U.S.C. 435) and was announced by OFPP Administrator Deidre A. Lee in an April 18, 2000 memorandum to the heads of executive departments and agencies. This "benchmark compensation amount" is to be used for contractor fiscal year 2000, and subsequent contractor fiscal years, unless and until revised by OFPP.

FLASH 2000-14

This "benchmark compensation amount" supercedes the amount cited in Headquarters Policy Flash 99-09 dated June 18, 1999, for costs incurred after January 1, 2000. Applicability to FAR and M&O contracts is addressed at 31.205-6(p) and 970.5204-13(d)(8)(viii), respectively. Questions regarding the foregoing may be addressed to Terry Sheppard of this office at (202) 586-8193, or terry.sheppard@hq.doe.gov.



Gwendolyn S. Cowan, Director

Attachment

cc: PPAG Members



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 18, 2000

OFFICE OF FEDERAL
PROCUREMENT POLICY

M-00-09

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Determination of Executive Compensation Benchmark Amount
Pursuant to Section 808 of Pub. L. 105-85

This memorandum sets forth the "benchmark compensation amount" as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. Under Section 39, the "benchmark compensation amount" is "the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available." The "benchmark compensation amount" established as directed by Section 39 limits the allowability of compensation costs under government contracts. The "benchmark compensation amount" does not limit the compensation that an executive may otherwise receive.

Based on a review of commercially available surveys of executive compensation and after consultation with the Director of the Defense Contract Audit Agency, I have determined pursuant to the requirements of Section 39 that the benchmark compensation amount for contractor fiscal year 2000 is \$353,010. This benchmark compensation amount is to be used for contractor fiscal year 2000, and subsequent contractor fiscal years, unless and until revised by OFPP. This benchmark compensation amount applies to contract costs incurred after January 1, 2000, under covered contracts of both the defense and civilian procurement agencies as specified in Section 808 of Pub. L. 105-85.

Questions concerning this memorandum may be addressed to Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, OFPP, on (202) 395-3254.

Deidre A. Lee
Administrator



Headquarters Policy Flash

FLASH 2000-15

DATE: May 16, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Federal Acquisition Circular (FAC) 97-17**

SUMMARY: This Policy Flash summarizes the six items included in FAC 97-17, which was published in the Federal Register on April 25, 2000, at 65 FR 24316. The FAC is available via the Internet at <http://www.arnet.gov/far> . Contracting personnel should review the details of each item in the full text of the FAC.

Please note: The effective date and applicability date for each item are noted below in the summary.

FLASH 2000-15

1. Competition Under Multiple Award Contracts

Effective Date: April 25, 2000

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after April 25, 2000.

This final rule amends FAR 2.101, Subpart 16.5, and 37.201 to clarify what the contracting officer should consider when planning for and placing orders under multiple award contracts. This rule affects all contracting officers that award multiple award contracts or place task or delivery orders under them. The rule--

- ✓ Requires the contracting officer to include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman in the solicitation and contracts if multiple awards will be made.
- ✓ Stresses key things the contracting officer must consider when deciding if a multiple award contract is appropriate, such as -
 - ▶ Avoiding situations in which awardees specialize exclusively in one or a few areas within the statement of work.
 - ▶ The scope and complexity of the contract requirement.
 - ▶ The expected duration and frequency of task or delivery orders.
 - ▶ The mix of resources a contractor must have to perform expected task or delivery order requirements.
 - ▶ The ability to maintain competition among the awardees throughout the contract's period of performance.
- ✓ Requires contracting officers to document their decision on whether or not to use multiple awards in the acquisition plan or contract file.
- ✓ Emphasizes the use of performance-based statements of work.
- ✓ Provides guidance on how to develop tailored order placement procedures.
- ✓ Requires contracting officers to consider cost or price as one of the factors in each selection decision for orders.
- ✓ Requires contracting officers to establish prices for each order that was not priced under the basic contract using the policies and methods in Subpart 15.4.
- ✓ Requires contracting officers to document the order placement rationale and price in the contract file.

Note: A comprehensive Acquisition Letter addressing DOE policies, procedures and best practices relating to Multiple Award Contracting, Governmentwide Agency Contracts (GWACs), and Federal Supply Schedules has been drafted and will be published shortly.

FLASH 2000-15

2. Determination of Price Reasonableness and Commerciality

Effective Date: April 25, 2000

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after April 25, 2000.

This final rule makes a minor editorial change to FAR 15.403-3 and converts the interim rule, which was published in FAC 97-14 as Item VI, as final. The editorial change amends the cross reference at 15.403-3(c)(1). The remainder of the interim rule that has been in effect since September 24, 1999, remains the same. The primary amendments made in the interim rule that are made final in this rule—

- ✓ Clarify procedures associated with obtaining information other than cost or pricing data when acquiring commercial items.
- ✓ Establish that offerors who fail to comply with requirements to provide the information shall be ineligible for award.

3. Caribbean Basin Trade Initiative

Effective Date: April 25, 2000

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after April 25, 2000.

This final rule amends FAR Parts 25.003, 25.400, 25.404, and the clause at 52.225-5, Trade Agreements, to implement the determination of the United States Trade Representative to renew the treatment of Caribbean Basin country end products as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic and Honduras. This rule applies only if an acquisition is subject to the Trade Agreements Act (see FAR 25.403). Offers of end products from the Dominican Republic and Honduras are no longer acceptable under such acquisitions unless the contracting officer does not receive any offers of U.S.-made end products or eligible products (designated, Caribbean Basin, or NAFTA country end products).

4. Utilization of Indian Organizations and Indian-Owned Economic Enterprises

Effective Date: June 26, 2000

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after June 26, 2000.

This final rule amends FAR Subpart 26.1 and the clause at 52.226-1 to delete DoD-unique requirements relating to Indian Organizations and Indian-Owned Economic Enterprises from the FAR.

FLASH 2000-15

5. Ocean Transportation by U.S.-Flag Vessels

Effective Date: June 26, 2000

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after June 26, 2000.

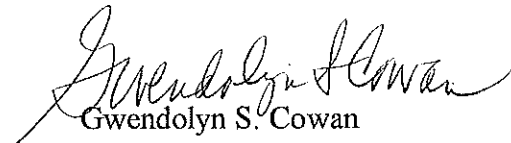
This final rule amends FAR 47.504 and the clauses at 52.212-5, 52.213-4, and 52.247-64 to apply the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures. This rule only affects civilian agency contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954. The rule also adds Alternate I of 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels, to the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items. Alternate I applies when the supplies furnished under the contract must be transported exclusively in privately owned U.S.-flag vessels.

6. Technical Amendments

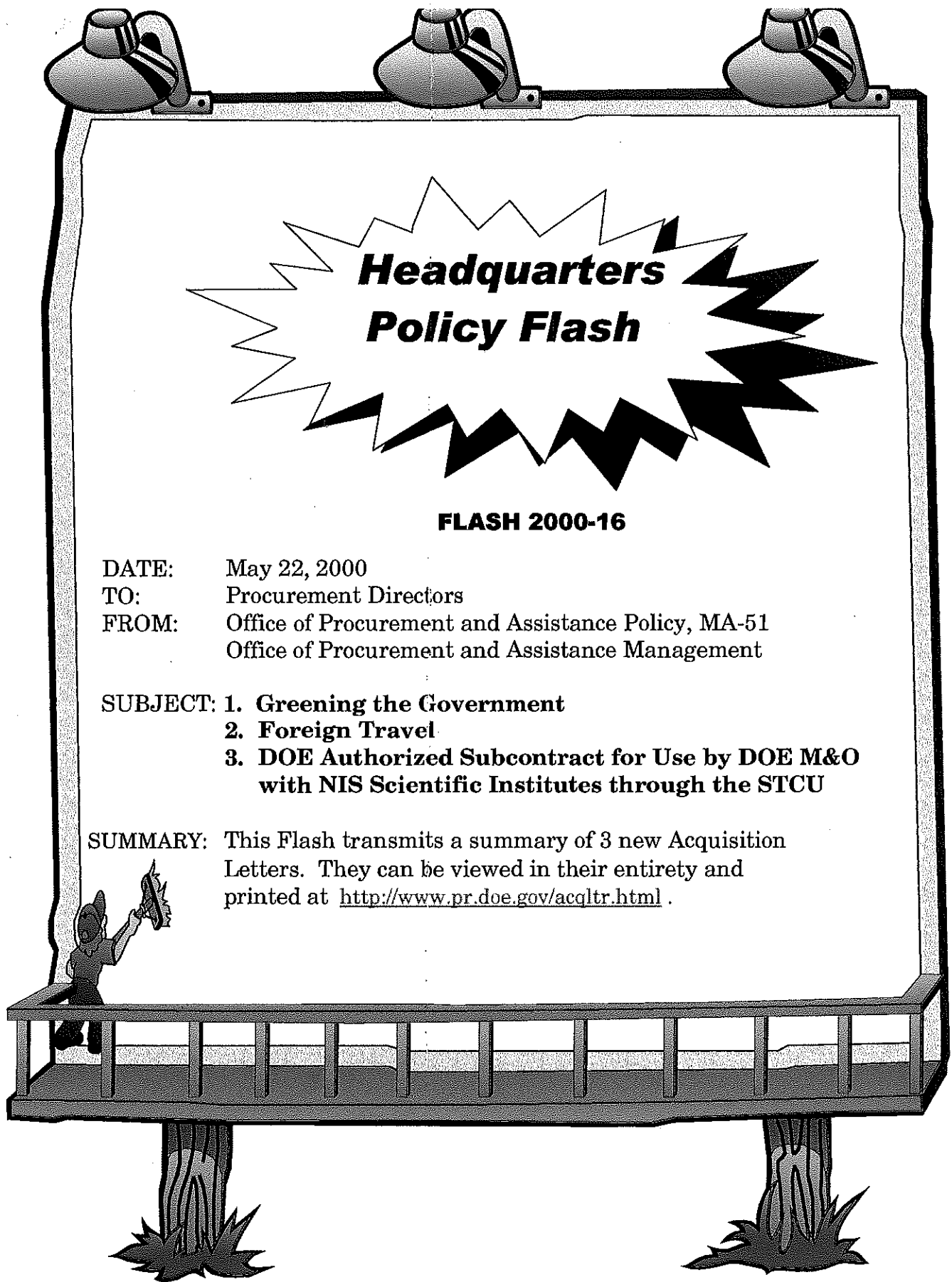
Effective Date: April 25, 2000

These amendments update references and make editorial changes at sections 6.304, 31.101, 32.411, 32.502-4, 32.805, 42.1204, and 42-1205.

Any questions relating to the information in this Flash may be directed to Kevin Smith at kevin.m.smith@pr.doe.gov, or by telephone at 202-586-8189.


Gwendolyn S. Cowan
Director

cc:
PPAG Members



FLASH 2000-16

1. Greening the Government Requirements in Contracting (AL-2000-03)

Acquisition Letter 2000-03 is being issued to establish roles and responsibilities for the procurement community to implement several Greening the Government Executive Orders. They are Executive Order 13101 entitled "Greening the Government Through Waste Prevention, Recycling and Federal Acquisition," and Executive Order 13123 entitled "Greening the Government Through Efficient Energy Management." This new AL requires the Head of the Contracting Activity to appoint an acquisition advocate to serve as the procurement expert for greening initiatives. The AL also assigns responsibilities to both field Contracting Officers and the site advocate, and includes guidance on the use of FAR and DEAR clauses which include greening requirements.

Please be aware that two additional Greening the Government Executive Orders were issued on April 21 and 22, 2000. They are Executive Order 13148 entitled "Greening the Government Through Leadership in Environmental Management," and Executive Order 13149 entitled "Greening the Government Through Fleet and Transportation Efficiency." It is anticipated that additional requirements will be added to this Acquisition Letter to implement these new Orders but it is too early to give specifics. An informative briefing on the Affirmative Procurement Program and greener purchasing has been prepared by the White House Task Force on Recycling. It may be viewed at <http://www.ofee.gov/ppt/slide1.htm>.

Any questions relating to the information this AL may be directed to Richard Langston at Richard.Langston@hq.doe.gov or by telephone at 202-586-8247.

2. DOE Administrative Class Deviation, 952.247-70, Foreign Travel, and 970.5204-52, Foreign Travel (AL-2000-04)

The attached Acquisition Letter (AL) provides contracting officers guidance to implement the requirements contained in DOE Order, 551.1, Official Foreign Travel. The new order changed the Department's procedures which in turn necessitated an administrative deviation to the existing procurement coverage set forth at DEAR 952.247-70, Foreign Travel, and DEAR 970.5204-52, Foreign Travel.

FLASH 2000-16

DEAR 952.247-70, Foreign Travel, is modified to reflect that the new DOE Order 551.1, Official Foreign Travel, governs the conduct of foreign travel. DEAR 970.5204-52 is deleted as foreign travel requirements under a DOE contract are contained in the Contractor Requirements Document of DOE Order 551.1, Official Foreign Travel, which is incorporated into contracts through DEAR 970.5204-78, Laws, Regulations, and DOE Directives.

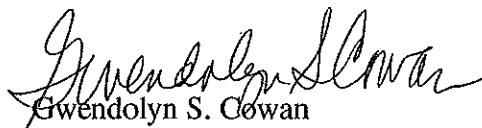
Any questions relating to the information this AL may be directed to Terrence Sheppard at Terry.Sheppard@hq.doe.gov or by telephone at 202-586-8193.

3. **DOE Authorized Subcontract for Use by DOE Management and Operating (M&O) Contractors with New Independent States' Scientific Institutes through the Science and Technology Center in Ukraine (AL-2000-05)**

This AL provides Contracting Officers a model subcontract for use by the management and operating contractors (M&Os) that intend to enter into three-party subcontracts with the Science and Technology Center in Ukraine (STCU) and scientific institutes of the New Independent States (NIS) of the former Soviet Union.

Any questions relating to the information this AL may be directed to Bob Webb at Robert.Webb@hq.doe.gov or by telephone at 202-586-8264.

All of these Acquisition Letters have been reviewed by the Field Management Council and approved by the Deputy Secretary for release.


Gwendolyn S. Cowan
Director

cc:
PPAG Members

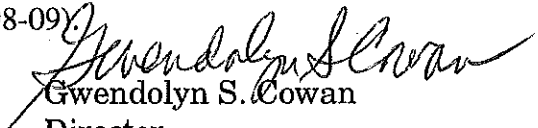


Headquarters Policy Flash

FLASH 2000-17

DATE: June 15, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management
SUBJECT: **Extension of 8(a) Program - Memorandum of Understanding**

The Memorandum of Understanding (MOU) between the Small Business Administration (SBA) and DOE governing the 8(a) Program has been extended until September 30, 2000, or until the Partnership Agreement (government-wide uniform MOU) is executed by both agencies. The MOU allows DOE to contract directly with 8(a) firms (See Acquisition Letter 98-09).



Gwendolyn S. Cowan
Director

cc: PPAG Members



Headquarters Policy Flash

FLASH 2000-18

DATE: June 19, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management
SUBJECT: APPROVAL OF DEVIATION REQUESTS

For the past several years, the Department has been subject to a statutory prohibition regarding the use of appropriated funds to award or modify a Department of Energy contract which contains a deviation from a provision or clause prescribed by the Federal Acquisition Regulation. This prohibition applies unless the Secretary of Energy authorizes, on a case-by-case basis, such a deviation; and it is applicable to both management and operating (M&O) and non-M&O contracts. Section 302 of the FY 2000 Energy and Water Act also requires that the Department notify the Subcommittees on

FLASH 2000-18

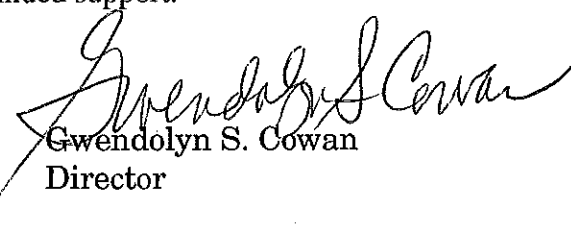
(JUNE 19, 2000)

Energy and Water Development of the Committees on Appropriations of the House of Representatives and the Senate at least 60 days prior to the award or modification of a DOE contract which contains a provision or clause which deviates from that prescribed in the FAR, and the reasons therefore. Acquisition Letter 99-07 was issued to implement the FY2000 requirement for this legislative provision.

To strengthen both Headquarters and field contracting activity processes for reviewing and approving deviations to the Department's contracts, the Procurement Executive had also issued Acquisition Letter 99-05, Deviations, Local Clauses, Uniform Contract Format, and Clause Matrix, dated July 9, 1999. The procedures provided guidelines on which deviation requests must be forwarded to Headquarters for review and approval by the Procurement Executive, and in the case of FAR deviations, the Secretary of Energy. The procedures also required that all facility management contract deviations must be approved by the Procurement Executive, as well as certain other deviations, including those to the cost principles and cost accounting standards.

Please ensure that your staff is reminded of the requirements cited in Acquisition Letters 99-05 and 99-07 and that deviation request packages are submitted to the Office of Management Systems (MA-52) for personal review and approval by the Richard Hopf. In addition, you are reminded that page 6 of Acquisition Letter 99-05, requires the Head of Contracting Activity (HCA) to provide my office a copy of each approved deviation and the supporting information. Documentation should be sent electronically to Michael.L.Righi@hq.doe.gov

Thank you for your continued support.



Gwendolyn S. Cowan
Director



Headquarters Policy Flash

FLASH 2000-19

DATE: June 23, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **A. Federal Acquisition Circular (FAC) 97-18**
B. GSA's Small Business Online Shopping
C. OFPP Best Practices for Past Performance
D. GAO Decision on Contract Documentation

SUMMARY: This Policy Flash summarizes the recently issued FAC 97-18; provides notice of a newly available GSA on-line purchasing program called SmallBizMall; provides the website address for downloading OFPP's newly issued best practices guide on past performance information; and, summarizes a recent GAO protest decision regarding contract documentation.



FLASH 2000-19

(JUNE 23, 2000)

A. Federal Acquisition Circular (FAC) 97-18

The following nine items are in FAC 97-18, which was published in the Federal Register on June 6, 2000, at 65 FR 36011. The FAC is available via the Internet at <http://www.arnet.gov/far>. Contracting personnel should review the details of each item in the full text of the FAC.

Please note: The effective date and applicability date for each item are noted below in the summary.

1. Rescission of Office of Federal Procurement Policy Letters

Effective Date: June 6, 2000

This final rule reflects editorial amendments removing unnecessary cross-references to policy letters that were rescinded by the Office of Federal Procurement Policy (OFPP) (65 FR 16968, March 30, 2000).

2. FAR Drafting Principles

Effective Date: August 7, 2000

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.

This final rule adds Federal Acquisition Regulation drafting principles to enhance a common understanding of the regulation among all members of the acquisition team and other users. This rule affects all contracting officers who use the FAR. The final rule adds drafting conventions in FAR 1.108 and amends 1.105-2, 52.101, 52.104, 52.105, and 52.200 to reflect current FAR drafting conventions. The drafting conventions in FAR 1.108 address several issues, including: words and terms used in the FAR; delegation of authority; dollar thresholds; application of FAR changes to solicitations and contracts; citations; and imperative sentences that identify contracting officer responsibilities. In particular, paragraph (b) of the new FAR section 1.108 states that each authority is delegable unless specifically stated otherwise (see 1.102-4(b)). Also, paragraph (d) provides that unless otherwise specified: (1) FAR changes apply to solicitations issued on or after the effective date of the change; (2) COs may, at their discretion, include FAR changes in solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date; and (3) COs may, at their discretion, include the changes in any existing contract with appropriate consideration.

FLASH 2000-19

(JUNE 23, 2000)

3. Requirements Supporting Procurement of Recycled Products and Environmentally Preferable Services

Effective Date: August 7, 2000

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.

This final rule implements Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, dated September 14, 1998. This rule is significant for all contracting officers who buy supplies, including supplies that are furnished under a service contract. The rule rewrites text currently in the FAR based on earlier Executive orders, but reorganizes and relocates some of the text to conform to plain language guidelines for Government writing. The rewrite and reorganization should make the text easier to use and understand. The revisions also emphasize Executive branch policies for the acquisition of products containing recovered material and other environmentally preferable products and services. The rule—

- ▶ Revises FAR Subpart 7.1 to ensure that requirements for printing and writing paper meet minimum content requirements specified in the E.O.
- ▶ Revises Subpart 11.3 to add definitions and special requirements to implement E.O. requirements and Environmental Protection Agency (EPA) regulations governing acquisitions of printing and writing paper, and to clarify that contracting officers may include in solicitations additional information requirements when needed to determine if the offeror's product meets requirements for recycled content or related standards.
- ▶ Clarifies in Part 13 how the procurement requirements of the Resource Conservation and Recovery Act, 42 U.S.C. 6962, apply to micro-purchases and acquisitions that do not exceed \$100,000.
- ▶ Reorganizes and revises Subparts 23.4 and 23.7 and associated clauses.

FLASH 2000-19

(JUNE 23, 2000)

4. General Records Schedules

Effective Date: August 7, 2000

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.

This final rule implements National Archives and Records Administration General Records Schedule 3, Procurement, Supply, and Grants Records (NARA Schedule 3), dated December 15, 1998. This rule affects all contracting officers. The rule--

- ▶ Rewrites and reorganizes the text already in the FAR to make it easier to understand.
- ▶ Simplifies the retention table by grouping several categories of records that were previously treated as separate records under more generic record categories (e.g., the contract file or the contract administration records).
- ▶ Deletes separate retention policy on signed original justifications and approvals, determinations and findings, and rejected engineering change proposals. Those records are retained with the contract files shown in blocks 2 through 7 of the new retention table.
- ▶ Deletes the separate retention period for contract status, expediting, and production surveillance records. Those records are retained with the contract administration records shown in block 7 of the new retention table.

5. Federal Supply Schedules Small Business Opportunities

Effective Date: August 7, 2000

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after August 7, 2000.

This final rule amends the Federal Acquisition Regulation to ensure that small businesses holding contracts under the Federal Supply Schedules are afforded the maximum practicable opportunity to compete for and receive FSS purchases. The rule-

FLASH 2000-19

(JUNE 23, 2000)

- ▶ Encourages ordering offices to consider the availability of small business concerns under the schedule and encourages ordering offices to consider small businesses when conducting evaluations before placing an order.

NOTE: See Acquisition Letter 2000-02, dated 04/20/00, titled *Small Business Programs*, which places further requirements on DOE Contracting Officers to maximize the award of purchases to small businesses holding contracts with the Federal Supply Schedule (FSS). The AL specifically states that Contracting Officers are to target FSS order competitions to small business firms. Contracting Officers are to coordinate with requestors to identify three or more small businesses that hold relevant FSS contracts. FSS order competitions should be further limited, when appropriate, to specific socio-economic categories of small businesses, such as woman-owned or small disadvantaged businesses.

- ▶ Amends FAR Subpart 38.1 to reaffirm that the General Services Administration and agencies delegated the authority to establish a Federal Supply Schedule must comply with all statutory and regulatory requirements before issuance of a solicitation.
- ▶ Revises the FSS guidance in accordance with the plain language guidelines in a White House memorandum, Plain Language in Government Writing, dated June 1, 1998.

6. Trade Agreements Thresholds

Effective Date: June 6, 2000

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after June 6, 2000.

This final rule amends FAR Subparts 25.2, 25.4, 25.6, and 25.11, and the clauses at 52.225-11 and 52.225-12 to implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement (NAFTA), as published by the U.S. Trade Representative in the Federal Register at 65 FR 17332, March 31, 2000. Contracting Officers must review the new thresholds when acquiring supplies, services, or construction, in order to select the appropriate contract clauses to implement the Buy American Act, Balance of Payments Program, trade agreements, and sanctions of European Union country end products and services.

FLASH 2000-19

(JUNE 23, 2000)

7. Restrictions on Acquisitions from Yugoslavia and Afghanistan

Effective Date: July 6, 2000

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after July 6, 2000.

This final rule amends FAR Subpart 25.7, section 25.1103, and the associated clauses at 52.212-5, 52.213-4, and 52.225-13, to implement Executive Orders 13121 and 13129. These Executive orders, as modified by Office of Foreign Assets Control (OFAC) General Licenses Numbers 2 and 4, prohibit the importation into the United States of any goods or services from Serbia (excluding the territory of Kosovo) or the territory of Afghanistan controlled by the Taliban. As a matter of policy, the Government does not generally acquire, even for overseas use, supplies or services that cannot be imported lawfully into the United States. This rule primarily affects contracting officers making purchases overseas, for overseas use, because the Treasury Department already prohibits import of these restricted goods and services into the United States. The rule is particularly beneficial to contracting officers facing unusual circumstances overseas (such as location within a restricted territory), explicitly providing an exception for such circumstances.

8. Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage

Effective Date: June 6, 2000

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after June 6, 2000.

This interim rule amends FAR Part 30, Cost Accounting Standards Administration, and the provision at FAR 52.230-1, Cost Accounting Standards Notices and Certification, to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65) and the Cost Accounting Standards (CAS) Board's interim rule, Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage. The FAR rule revises policies affecting which contractors and subcontractors must comply with Cost Accounting Standards. The rule—

FLASH 2000-19

(JUNE 23, 2000)

- ▶ Amends the provision at FAR 52.230-1, Cost Accounting Standards Notices and Certification, to remove the requirement that a contractor or subcontractor must have received at least one CAS-covered contract exceeding \$1 million ("trigger contract") to be subject to full CAS coverage, since the CAS Board removed this "trigger contract" amount from its corresponding solicitation provision, Cost Accounting Standards Notices and Certification, at 48 CFR 9903.201-3. The CAS Board established a new "trigger contract" dollar amount of \$7.5 million in the CAS applicability section of its regulations (48 CFR 9903.201-1) rather than in its solicitation provision. Since FAR 30.201-1 already references this section, no FAR changes were required to address the new "trigger contract" dollar amount.
- ▶ Increases the dollar threshold for full CAS coverage from \$25 million to \$50 million.
- ▶ Adds procedures and conditions for agency waiver of the applicability of CAS.

9. Technical Amendments

Effective Date: June 6, 2000

These amendments update references and make editorial changes at sections 3.303, 5.204, 47.504, 49.601-1, and 49.601-2.

B. GSA's Small Business Online Shopping

Launched on April 3, 2000, the GSA's new SmallBizMall gives Federal agencies the opportunity to use the web to order information technology products and services from 8(a) and small businesses. Nine industry partners are part of this pilot program, which is expected to be fully implemented within the next few months. The advantages of using a small business e-commerce site include: short procurement lead time; easy to use; qualified 8(a) industry partners are available; receive the 8(a) credit; support small business and meet procurement preference goals; support the Presidential policy for E-Commerce use. The website is www.smallbizmall.gov.

FLASH 2000-19

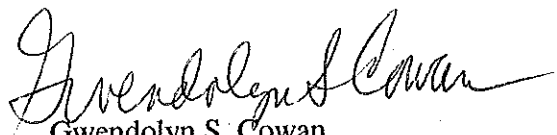
(JUNE 23, 2000)

C. OFPP Best Practices for Past Performance

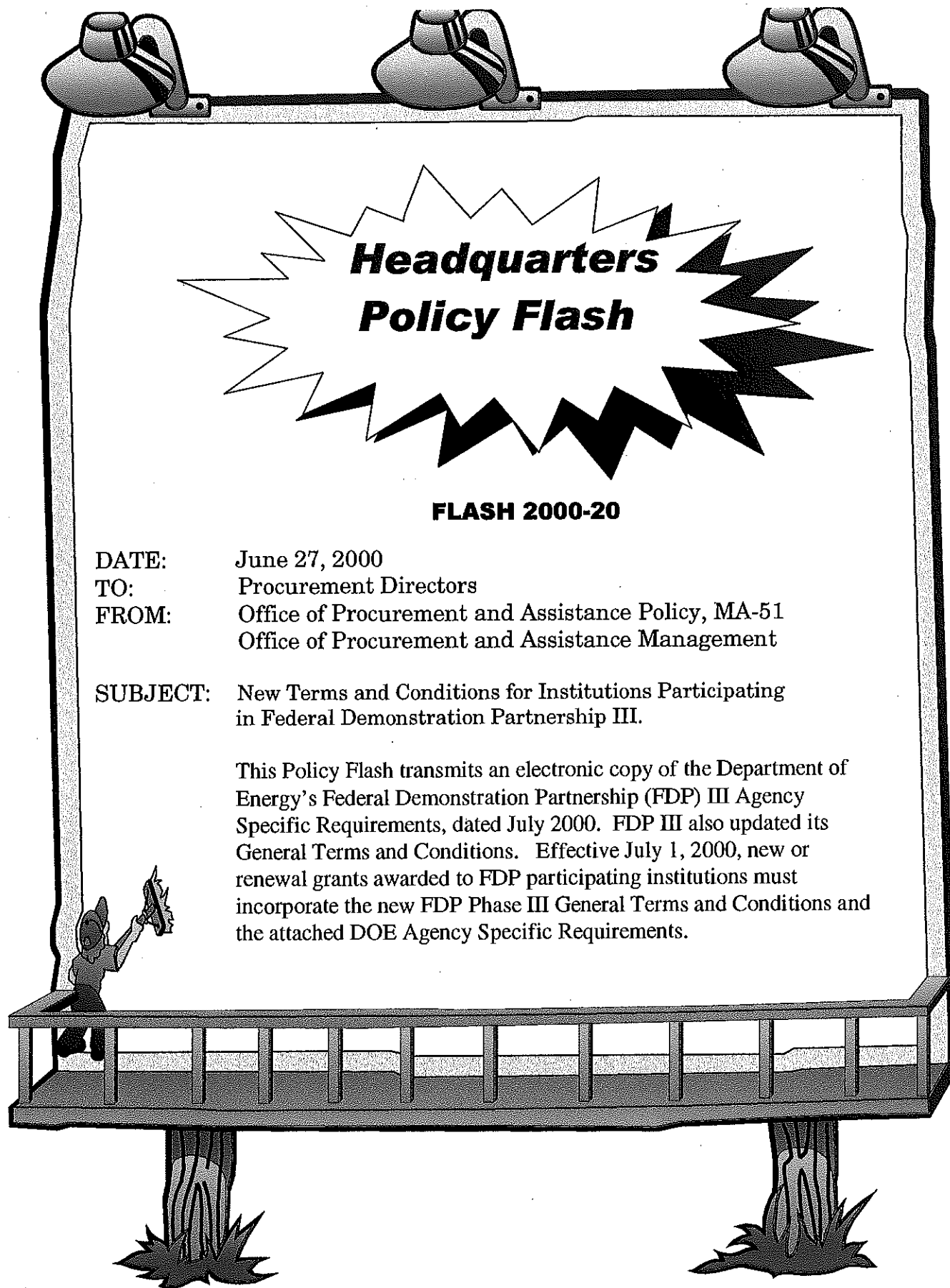
The Office of Federal Procurement Policy has issued its *Best Practices for Collecting and Using Current and Past Performance Information*. Federal agencies are encouraged to use the document as part of good contract administration practice and as a useful tool in the source selection process. The document is available on the Internet at: <http://www.arnet.gov/Library/OFPP/BestPractices/>

D. GAO Decision on Contract Documentation

GAO recently sustained a protest of a source selection decision where the record did not establish the reasonableness of the evaluation or the cost/technical tradeoff underlying the source selection. In this case an agency kept the slides presented at the oral presentations, but the slides did not provide a sufficient record to test the reasonableness of the agency's evaluation. GAO also found that the best value determination was inadequately documented because it only addressed the awardee's advantages and did not reflect a comparison with the protester. The case is J&J Maintenance, and it can be accessed on the Internet at: <http://www.gao.gov/decisions/bidpro/2847082.htm>.


Gwendolyn S. Cowan
Director

cc:
PPAG Members



Headquarters Policy Flash

FLASH 2000-20

DATE: June 27, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

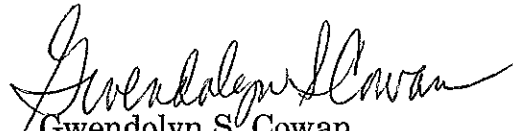
SUBJECT: New Terms and Conditions for Institutions Participating
in Federal Demonstration Partnership III.

This Policy Flash transmits an electronic copy of the Department of Energy's Federal Demonstration Partnership (FDP) III Agency Specific Requirements, dated July 2000. FDP III also updated its General Terms and Conditions. Effective July 1, 2000, new or renewal grants awarded to FDP participating institutions must incorporate the new FDP Phase III General Terms and Conditions and the attached DOE Agency Specific Requirements.

FLASH 2000-20

(JUNE 27, 2000)

The National Science Foundation maintains the FDP terms and conditions at www.nsf.gov.80/home/grants/grants_fdp.htm Copies of the new FDP Operating Procedures, the FDP General Terms and Conditions and the DOE Agency Specific Requirements are available at this Internet address . You will also be able to access them from our financial assistance home page. Questions concerning these terms and conditions should be directed to Trudy Wood at (202) 586-5625.



Gwendolyn S. Cowan
Director

Attachment

**DEPARTMENT OF ENERGY
FEDERAL DEMONSTRATION PARTNERSHIP (FDP) III
AGENCY SPECIFIC REQUIREMENTS
JULY 2000**

The FDP General Terms and Conditions (T&Cs) are modified as follows:

1. Awards Covered by FDP T&Cs.

These terms and conditions are applicable to research and research-related grants to FDP participating institutions or organizations. The FDP T&Cs do not apply to cooperative agreements, contracts, or any other kind of transaction.

2. Prior Approval Requirements Not Included in the General T&Cs.

a. If the award instrument provides a notice that the funds obligated to the award are restricted year funds (e.g. one year money), Recipients must obtain the Contracting Officer's approval prior to initiating a one-time extension or carrying forward unobligated balances to subsequent funding periods (See FDP General T&Cs 25(c)(2) and (4)).

b. Recipients are required to notify the Contracting Officer of the transfer of a significant part of the research or substantive programmatic effort only when the transfer represents more than 25 percent of the effort or a change of scope (See FDP General T&C 25(b)(4)).

3. Unallowable Direct Costs in Addition to Those in A-21/A-122

Interest penalties for late payment under a contract are not allowable costs under this award.

4. Contact Information for Technical Matters

Questions regarding technical matters should be referred to the DOE Project Officer identified in Block 11, "DOE PROJECT OFFICER", on the Notice of Financial Assistance Award.

5. Contact Information for Administrative Matters

Questions regarding administrative matters should be referred to the Contracting Officer or other individual identified in Block 12, "ADMINISTERED FOR DOE BY", on the Notice of Financial Assistance Award.

6. Contact Information for Intellectual Property Matters

Questions regarding intellectual property matters should be referred to the Patent Counsel designated by the Contracting Officer.

7. Revised Budget Requirements

Revised budgets should be submitted in the same format as the original budget submission.

8. Technical Reporting

- a. Required technical reports are identified on the Federal Assistance Reporting Checklist in the award instrument.
- b. All technical reports must be submitted to the individuals identified on the Reporting Checklist and include a completed DOE F 241.3, "Announcement of U.S. Department of Energy Scientific and Technical Information". A DOE F 241.3 is not required for management and progress report; lists of published literature citations or presentations; memoranda; or other non-technical information. DOE Form 241.3 is accessible at <http://www.osti.gov/mlink/>. Electronic submission of technical reports and the accompanying DOE F 241.3 is preferred. However, technical reports that include "Limited Rights Data", "Restricted Computer Software", and /or otherwise sensitive data should not be submitted electronically. (See DOE G. 241.1-1, "Guide to the Management of Scientific and Technical Information", at <http://www.explorer.doe.gov.1776/htmls/>).

9. Financial Reporting

Financial reporting requirements are identified on the Federal Assistance Reporting Checklist in the award instrument. Financial reports must be submitted to the individuals identified on the Reporting Checklist.

10. Continuation Funding Actions

An informal Continuation Progress Report must be submitted electronically to the DOE Project Officer (E-mail address identified in Block 11 on the Notice of Financial Assistance Award) and the Contracting Officer (E-mail address identified in Block 12 on the Notice of Financial Assistance Award) 90 days prior to the end of the budget period in order to receive a continuation award for the remainder of the project period. This informal report must provide a brief summary of the progress, a comparison of actual accomplishment with the goals established for the reporting period, reasons for slippage if goals were not met, an estimate of unobligated balances at the end of the budget period, and when applicable, an explanation of cost overruns or underruns. Revised budget information must be submitted if there are any significant changes in the size or scope of the project or in the originally-negotiated total estimated cost of the project.

**DOE AGENCY SPECIFIC REQUIREMENTS RELATED TO ARTICLES
IN THE GENERAL TERMS AND CONDITIONS**

- 11. Maximum Obligation
- 12. Collection of Amounts Due

OTHER DOE REQUIREMENTS

- 13. Recipient Acknowledgment of Award
- 14. Amendment of the Award
- 15. Disputes and Appeals
- 16. Debarment and Suspension

**DOE AGENCY SPECIFIC REQUIREMENTS RELATED TO ARTICLES
IN THE GENERAL TERMS AND CONDITIONS**

11. Maximum Obligation

REFERENCE: FDP ARTICLE 25, SECTION (b)(3)

The maximum DOE obligation to the recipient is limited to the amount shown on the Notice of Financial Assistance award in Block 16. b, "CUMULATIVE DOE OBLIGATIONS".

12. Collection of Amounts Due

REFERENCE: FDP ARTICLE 73

In the absence of a mutual agreement between the recipient and DOE, the Contracting Officer will make a determination regarding any recipient indebtedness and submit a written notice of such a decision to the recipient. Within 30 calendar days of the Contracting Officer's determination, the recipient must either pay the amount owed or inform the Contracting Officer of the recipient's intent to appeal the determination to the DOE Financial Assistance Appeals Board. If the recipient elects not to appeal or in those instances where no right of appeal exists, any amounts not paid within 30 calendar days of the Contracting Officer's determination will be considered a delinquent debt. The recipient and Contracting Officer will attempt to resolve all issues at the Contracting Officer level.

OTHER DOE REQUIREMENTS

13. Recipient Acknowledgment of Award

DOE systems require that certain DOE originated awards be signed by a DOE Contracting Officer and acknowledged by the recipient in order for DOE to make or authorize payment (if the amendment involves the obligation of funds). Except for awards funded solely by the Office of Science, recipients must acknowledge acceptance by returning the signed award/amendment document to the Contracting Officer. Awards funded by the DOE Office of Science will be issued unilaterally by the Contracting Officer.

14. Amendment of the Award

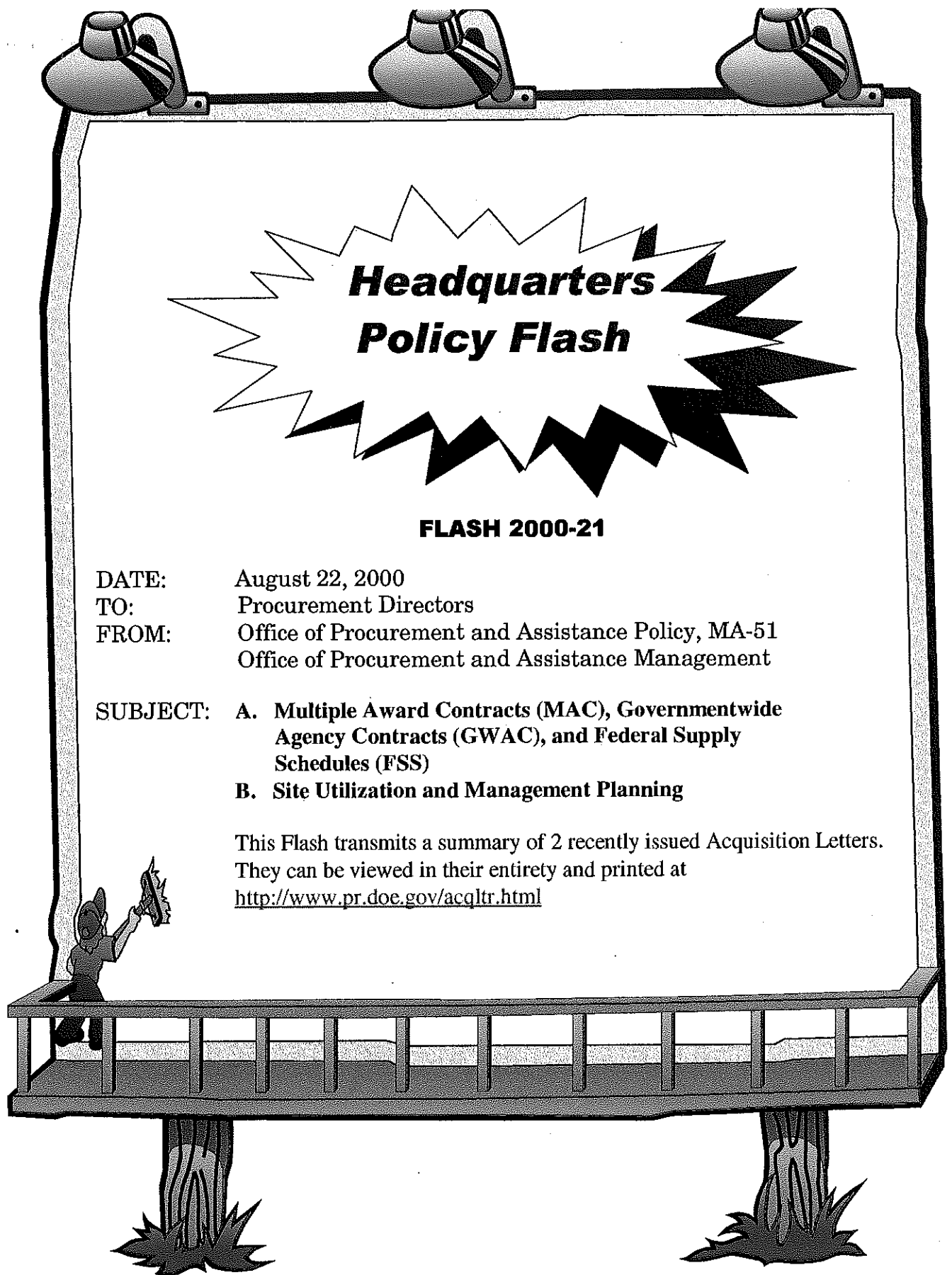
Requests by Recipients to amend an award must be in writing to the DOE Contracting Officer. An award amendment incorporating the request will be unilaterally issued at the discretion of the Contracting Officer.

15. Disputes and Appeals

The recipient must submit claims arising out of or relating to this award in writing to the Contracting Officer and must specify the nature and basis for the relief requested and include all data that supports the claim. DOE will attempt to resolve such claims informally at the Contracting Officer level. All disputes and appeals will be resolved in accordance with the procedures set forth in 10 CFR Part 600.22.

16. Debarment and Suspension

Applicants, recipients, subrecipients, and contractors under DOE financial assistance awards may be debarred and suspended for the causes and in accordance with the procedures set forth in 10 CFR Part 1036.



FLASH 2000-21
(AUGUST 22, 2000)

A. Multiple Award Contracts (MAC), Governmentwide Agency Contracts (GWAC), and Federal Supply Schedules (FSS) (AL-2000-07)

This Acquisition Letter highlights proper procedures and best practices for the Department's contracting personnel to follow in awarding and/or ordering from Multiple Award Contracts (MAC), Governmentwide Agency Contracts (GWAC), and the Federal Supply Schedule (FSS).

All three of these streamlined acquisition vehicles offer unique advantages to program and procurement personnel in fulfilling a wide range of their procurement requirements. The AL also provides guidance on using these vehicles to maximize the participation of small businesses as prime contractors in the definition of DOE requirements.

The AL also:

- Provides DOE contracting personnel with ways to avoid some of the problems that have become evident in the Government-wide use of MACs, such as inadequate competition and improper use of fair opportunity exceptions.
- Identifies some of the major advantages of using MACs, such as faster delivery and leveraged buying power.
- Gives Contracting Officers best practices to ensure that fair opportunity exists for all awardees under MACs.
- Identifies recent changes to the FAR on MAC policy and procedures.
- Provides numerous websites to get information on GWACs and the types of services and products available to all Federal agencies.
- Summarizes the ordering procedures for FSS buys, and identifies the type of supplies and services available through this streamlined acquisition vehicle.
- Highlights how Contracting Officers can increase their small business contracting through the use of MACs, GWACs, and the FSS.

The MA-51 point of contact for this AL is Kevin Smith, who may be reached at 202-586-8189, or at kevin.m.smith@pr.doe.gov

FLASH 2000-21
(AUGUST 22, 2000)


B. Site Utilization and Management Planning (AL-2000-08)

Acquisition Letter 2000-08 requires that certain described information about a DOE site, its mission, budget, and contracting strategy be available at the time of the planning for a new major requirement as an aid in acquisition planning. Cognizant Secretarial Officers (CSO) are responsible to assure that the information is available and, where a site has more than one CSO, they must cooperate among themselves and with other programs having a presence at the site.

The information is not required in a specific report or in a specific format and may be extracted from other existing sources. There is no intention to duplicate existing processes or planning. The information must consider the mission of the site over the next ten years with decreasing degrees of specificity. The Information is to be concurred in by the head Program Secretarial Officer, CSOs, and other DOE missions at the site. It should also be reviewed by the Deputy Secretary in his role as the Department's Chief Operating Officer. In the absence of compliance with the requirement for this information, contracting officers are not authorized to the contemplated award.

It is important to note that DOE contracting officers are not authorized to award or extend contracts subject to the AL either competitively or noncompetitively or through the exercise of an option, unless the requirement is derived from, and the acquisition strategy is consistent with, site utilization management information approved by senior management.

The MA-51 point of contact for this AL is Robert Webb, who may be reached at 202-586-8264, or at Robert.Webb@hq.doe.gov.


Gwendolyn S. Cowan
Director

Attachment

cc: PPAG Members



Headquarters Policy Flash

FLASH 2000-23

DATE: August 29, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: TERMINATION OF DOE'S INFORMATION MONITORING SYSTEM (TIMS)

This Flash Notice provides a memorandum from the Office of Scientific and Technical Information (OSTI) announcing that they will cease the operation of TIMS on October 1, 2000. OSTI has developed a more efficient, Internet-accessible system to replace TIMS, called DOE Energy Link (E-LINK). The conversion to E-LINK will eliminate the need for OSTI to clear scientific and technical information (STI) deliverables in the Procurement and Assistance Data System (PADS).

FLASH 2000-23
(AUGUST 29, 2000)

Please note that OSTI will cease processing TIMS clearances on August 31, 2000. After that date, PADS will not require an OSTI clearance to close out an award. While this will eliminate the TIMS closeout step, Contracting Officers are still responsible for ensuring that all STI deliverables are received and transmitted to OSTI prior to closeout. Therefore, Contracting Officers should:

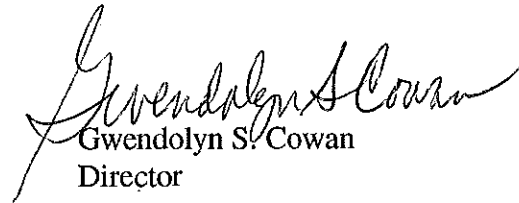
1. Check E-LINK at www.osti.gov/mlink to ensure that STI deliverables received by August 31, 2000 have been sent to OSTI. Reports submitted in paper require time to process, so OSTI will work with DOE staff to resolve any open issues concerning a DOE form 241 or report received by the August 31 cut-off date.
2. Ensure that STI deliverables received after August 31, are reviewed and release to OSTI with the accompanying DOE 241 form. Once the final STI deliverable is transmitted to OSTI, the Contracting Officer can consider that closeout step complete. Releasing officials are encouraged to use E-LINK to submit the DOE 241 form/report electronically. DOE staff may use E-LINK to check to see what reports have been submitted to OSTI. Electronic reports are processed immediately; reports submitted in paper require additional time for processing.

In March, the Office of Procurement and Assistance Policy conducted an inventory of reports received under DOE financial assistance awards. We found that some program offices routinely requested every report listed on the Financial Assistance Reporting Checklist. Reports should fill a useful and functional purpose. Contracting Officers must ensure that an award contains the minimum requirements necessary to monitor and report technical and financial performance. Contracting Officers should request that the DOE project officer justify all apparently burdensome reporting requirements .

Generally, R&D projects require only periodic project status/progress reports and a final scientific/technical report. Project status/progress reports are used to monitor performance, not to report final results. Therefore, these reports should not be sent to OSTI for distribution. While a DOE project director may request a scientific/technical report at the end of a phase or a task, they should not require an annual scientific/technical report if an annual project status/progress report is received. Non-R&D projects rarely require scientific/technical reports. A final status report is generally sufficient to determine whether the objectives of a non-R&D project have been accomplished.

FLASH 2000-23
(AUGUST 29, 2000)

Financial Assistance Letter 98-02 provides additional guidance on managing financial assistance report deliverables. If you have questions concerning reporting or closeout requirements, contact Trudy Wood, MA-51, at (202) 586-5625. If you have questions about TIMS clearances or the new E-LINK process, call Susan Tackett, OSTI, at (865) 576-0344.



Gwendolyn S. Cowan
Director

Attachment

cc:
PPAG Members
Financial Assistance Advisory Council



Department of Energy

Office of Scientific and Technical Information


Post Office Box 62

Oak Ridge, Tennessee 37831

<http://www.osti.gov>

August 25, 2000

MEMORANDUM FOR: Technical Information Officers
Gwendolyn Cowan, Director, Office of Procurement and Assistance
Policy

FROM: 
Sharon Jordan
Office of Program Integration

SUBJECT: Termination of the Departmental Technical Information Monitoring
System (TIMS)

Effective October 1, 2000, the Department's Office of Scientific and Technical Information (OSTI) will cease operation of the Technical Information Monitoring System (TIMS). Although TIMS served a useful purpose for over 20 years by helping the Department track and manage scientific and technical information (STI) deliverables resulting from contracts and financial assistance awards, today's information technology offers new opportunities for a more efficient, timely, and less resource-intensive approach.

I am pleased to announce that OSTI, the Offices of Procurement and Assistance Policy and Management Systems, and a Departmental working group have worked cooperatively to devise a streamlined process to track STI deliverables. The new process will use an Internet-accessible system called DOE Energy Link (E-Link) and eliminate the need for OSTI to clear STI deliverables in the Procurement and Assistance Data System (PADS).

To prepare for the transition to the new process, OSTI will cease processing TIMS clearances on August 31, 2000. After that date, PADS will not require an OSTI clearance to close out an award. Although the OSTI clearance requirement is terminated, Contracting Officers must continue to ensure that STI deliverables are sent to OSTI in order to make the results of taxpayer investments in research and development available to DOE, the scientific community, and the public.

To enable DOE staff to verify receipt of deliverables at OSTI, we will continue to obtain certain data on new awards from PADS, including the awardee name and award number, date, and the required STI deliverables code [Individual Procurement Action Request (IPAR) Item 51]. Subsequently, when STI deliverables are received by OSTI, the PADS data and data for the STI deliverable on the DOE 241 form will be recorded in E-Link. The Contracting Officer or other DOE staff may then access the system at www.osti.gov/mlink, obtain a password, and query the

data. The data may be searched by contract/grant number, title, author, or report number. A search by award number would result in the following:

- A listing of reports submitted under that award number
- Title of the STI deliverable(s)
- Author of the STI deliverable(s)
- Capability to display and print the entire record of data, including the corresponding reporting requirements code from PADS
- Capability to view or print the full text of the STI deliverable (e.g., during review/release)

To ensure a smooth transition, OSTI staff will provide each awarding office a list of STI deliverables received at OSTI prior to the cut-off date but still pending clearance due to data or processing issues. OSTI will work with DOE staff to resolve these issues.

After August 31st, Contracting Officers must ensure that STI deliverables are processed correctly and received by OSTI with the accompanying DOE 241 form. Releasing officials are encouraged to use E-Link to submit the form and reports electronically.

The working group also reviewed the listing of OSTI deliverables in the IPAR Handbook, Item 51, and are significantly reducing the types of deliverables listed. A new listing will be included in the October 1, 2000, edition of the IPAR Handbook. Generally, research and development awards would require only a final scientific/technical report. Project status reports or other status reports are management reports and, therefore, should not be sent to OSTI.

Please forward this information to those who deal with STI submissions and clearances. We appreciate your assistance with these changes and look forward to continued collaboration as we move into the electronic reporting environment. You may contact Susan Tackett at (865) 576-0344 with questions about TIMS closeouts or the new procedures.

cc: Trudy Wood, MA-51
Steve Mournighan, MA-52
Nancy Canody, MA-52



Headquarters Policy Flash

FLASH 2000-24

DATE: September 8, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management


SUBJECT: **HUBZONE PROCUREMENT TRAINING COURSE**

The Small Business Administration (SBA) is sponsoring a nationwide Hubzone Procurement Training course during Fiscal Year 2001 for procurement officials, to include contracting officers, contract specialists, COTRs and program managers. This 2-day course will provide 15 credit hours toward the individual's continuous education requirement, identified in Office of Federal Procurement Policy (OFPP) Letter 97-01 (dated 09/12/97) and is being offered *FREE-OF-CHARGE*.

FLASH 2000-24
(SEPTEMBER 8, 2000)

Agency OSDBUs are coordinating registration of the course. The DOE OSDBU point of contact is Ms. Marcia Haynes and she can be reached at (202) 586-6933. To allow adequate coordination of this nationwide program, interested persons should fax their registration forms to Ms. Haynes no later than *Friday, September 15, 2000*, at (202) 586-5488. We are working with SBA to get an extension to the registration date. Please contact Ms. Haynes to obtain additional information.

Attached for your information and use are (1) the draft agenda, (2) a schedule of dates (a different location each month), and (3) the registration form.


Gwendolyn S. Cowan
Director

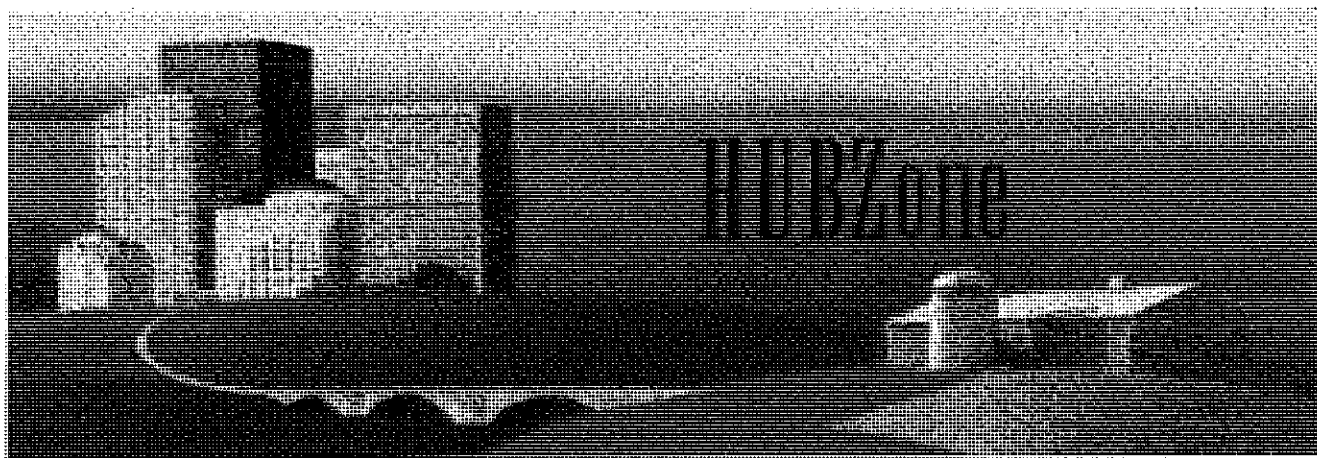
3 Attachments

cc:
PPAG Members

DRAFT

INSTRUCTOR'S AGENDA

HUBZone PROCUREMENT TRAINING



SMALL BUSINESS ADMINISTRATION
HUBZone EMPOWERMENT CONTRACTING PROGRAM
"Rebuilding America's Communities One Small Business at a Time"

DAY ONE

8:00 Check-in/Open Registration

8:45 WELCOME

Introduction (SBA/OSDBU)

Instructors' Introductions

Participants' Introductions

Logistics

Objectives

Purpose of HUBZone Program

Purpose of Training

Agenda

Parking Lot

Telecast

Roles and Responsibilities (SBA/OSDBU)

SBA

Procurement Official

10:30 BREAK

10:45 Review of Regulations (SBA)

12:00 LUNCH

1:30 Regulations Review Exercise (SBA/OSDBU)

SBA Small Business Program Comparison

8(a) Business Development

HUBZone Empowerment Contracting

Small Disadvantaged Business

Order of Precedence (SBA)

Types of HUBZone Contracts (OSDBU)

HUBZone Competitive

HUBZone Sole Source

Full and Open Competition/Price Evaluation

Preference

3:30

BREAK

3:45

Small Business Flow Chart (OSDBU)

**Subcontracting under the HUBZone Program
(OSDBU)**

Questions and Answers

Case Studies (ASSIGNED GROUPS)

5:30

ADJOURN

DAY TWO

- 8:45 **CHECK-IN/REVIEW (SBA)**
 Parking Lot
- 9:00 **Case Presentations (ASSIGNED GROUPS)**
- 10:45 **BREAK**
- 11:00 **Overview of the Certification Process (SBA)**

 Size Standard Requirements (SBA)
- 12:00 **LUNCH**
- 1:30 **Appeal Procedures (SBA/OSDBU)**

 Protest Process (SBA/OSDBU)
- 2:00 **Current Program Status (SBA)**

 How to Report HUBZone Contract Awards (OSDBU)

 Marketing and Outreach to HUBZone Firms
 (OSDBU)
 Meeting Agency Goals
 Marketing Strategies
- 3:30 **BREAK**
- 3:45 **How to Effectively Use the Pro-Net System (SBA)**
- 4:15 **Lessons Learned (SBA/OSDBU)**

 Summary/Closing
- 5:30 **ADJOURN**

**HUBZONE PROCUREMENT TRAINING SCHEDULE
FISCAL YEAR 2001**

OCTOBER 2000

19 – 20 LOS ANGELES, CALIFORNIA

NOVEMBER 2000

1 – 2 CHARLOTTE, NORTH CAROLINA
28 – 29 LAS VEGAS, NEVADA

DECEMBER 2000

5 – 6 NASHVILLE, TENNESSEE

JANUARY 2001

25 – 26 SAN ANTONIO, TEXAS

FEBRUARY 2001

6 – 7 NEW ORLEANS, LOUISIANA
19 – 20 ATLANTA, GEORGIA

MARCH 2001

6 – 7 SAN FRANCISCO, CALIFORNIA
29 – 30 SAN JUAN, PUERTO RICO

APRIL 2001

10 – 11 MINNEAPOLIS, MINNESOTA
24 – 25 KANSAS CITY, MISSOURI

MAY 2001

8 – 9 WASHINGTON DC
22 – 23 DENVER, COLORADO

JUNE 2001

21 – 22 CHICAGO, ILLINOIS
27 – 28 HELENA, MONTANA

JULY 2001

18 – 19 CUMBERLAND, KENTUCKY
24 – 25 BOSTON, MASSACHUSETTES

AUGUST 2001

7 – 8 ANCHORAGE, ALASKA
21 – 22 NEW YORK, NEW YORK

SEPTEMBER 2001

11 – 12 SEATTLE, WASHINGTON
18 – 19 PHILADELPHIA, PENNSYLVANIA



HUBZone PROCUREMENT TRAINING

REGISTRATION FORM

Location (see schedule): _____ *Date:* _____

Name: _____

Title/Grade: _____

Agency: _____

Agency Address: _____

Business Phone: _____

E-mail Address: _____

Business Fax: _____

LIST OF QUESTIONS OR CONCERNS:

**FAX OR E-MAIL YOUR REGISTRATION INFORMATION TO YOUR
AGENCY'S OSDBU NO LATER THAN SEPTEMBER 15, 2000.**

POINT OF CONTACT: _____

FAX NUMBER: _____

E-MAIL ADDRESS: _____

*** Note: Supervisors this 15-hour training session may be credited toward the individual's DAWIA-required "Continuing Learning Points"**



Headquarters Policy Flash

FLASH 2000-25

DATE: September 19, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Procurement Policy Website Updates

SUMMARY: As we discussed during the recent Procurement Director's Conference call, we are finalizing the update of several of the pages on our Procurement Policy Website (the DEAR, the Acquisition Guide, and the M&O Contract Clause Matrix). While some of the material has already been updated, we anticipate all three pages to be fully updated by September 30, 2000. Specifics about the updates are discussed below.

FLASH 2000-25

The following are the website addresses for these documents.

DEAR - <http://www.pr.doe.gov/dear.html>

Acquisition Guide - <http://www.pr.doe.gov/acqguide.html>

M&O Clause Matrix - <http://www.pr.doe.gov/pr6.html>

As always, we are interested in receiving feedback from users to assist us in improving our Website. Any comments/questions relating to the Policy Website can be directed to Kevin Smith at kevin.m.smith@pr.doe.gov or at 202-586-8189.

1. Department of Energy Acquisition Regulation On-Line

The Website version of the DEAR is the only version that we currently maintain. Up until now, the on-line format has been in *HTML*, which has proven to be difficult for editing and downloading purposes. The new format of the DEAR will be in *MS Word*, which will make retrieval, downloading, and printing much easier for users. This updated Website version also includes all final DEAR rulemakings to date.

2. DOE Acquisition Guide On-Line

The DOE Acquisition Guide is intended to provide the Department's procurement and program communities with the necessary tools to successfully accomplish their acquisition-related responsibilities. The Guide is organized with Chapters that correspond to DEAR and FAR Parts, and includes the following types of material:

- **Standard Operating Procedures** - internal Departmental procedures for procurement and program personnel to follow in performing various acquisition functions.
- **Guiding Principles** - essential objectives that, when satisfied, provide a measure of the effectiveness and efficiency of procurement systems.
- **Best Practices** - practical techniques for program and procurement personnel to follow in performing the various tasks of their acquisition duties.
- **Samples and Models** - of forms and other useful documentation.

The Acquisition Guide also serves as a permanent repository for general information that is useful to the acquisition community, and may include information that was originally issued through other means, such as DOE Acquisition Letters.

FLASH 2000-25

Please note: The DOE Acquisition Guide will no longer be published in a printed version, but will continue to be maintained on the Policy Website. Users can access the files on the Website to download and print material as needed. The new sections/revisions to the Guide include:

- ▶ Chapter 1- *Acquisition Regulations System*

This chapter is being revised to update the guidance on the FAR/DEAR deviation process to conform with guidance contained in Acquisition Letter 99-05, and to update the coverage addressing DOE O 541.1, Appointment of Contracting Officers and Contracting Officer Representatives (COR). New guidance is provided for the appointment of non-Government personnel as CORs under limited circumstances, and a sample COR designation letter is now included in this chapter.

- ▶ Chapter 9 - *Performance Guarantees*

This new chapter provides a sample Performance Guarantee Agreement in accordance with DEAR 909.104-3 and 970.0902. It was formerly included in canceled Acquisition Letter 98-05R.

- ▶ Chapter 26 - *EPACT Cost Sharing Requirements*

This new chapter provides implementation guidance on sections 3001 and 3002 of the Energy Policy Act, (EPAct) 42 U.S.C. 13542 for acquisition awards. This topic was formerly addressed in canceled Acquisition Letter 96-04.

- ▶ Chapter 33 - *Alternative Dispute Resolution*

This new chapter provides guidance for the use of alternative dispute resolution techniques in connection with disputes that arise under the Contract Disputes Act (CCDA) of 1978, U.S.C. sections 601-613. This topic was formerly addressed in canceled Acquisition Letter 94-22R.

- ▶ Chapter 42 - *Novation Agreements*

This new chapter provides a comprehensive model novation agreement that covers more aspects of novation agreements found in the FAR.

- ▶ Chapter 47 - *Air Charter Services*

This new chapter provides guidance on the Department's process for procuring air charter services. This topic was formerly addressed in canceled Acquisition Letter 96-08.

FLASH 2000-25

▶ Chapter 52 - *Model Local Clauses*

This new chapter provides guidance on the use of local clauses in DOE solicitations and contracts, and provides model local clauses that Contracting Officers may use when drafting their solicitations and contracts. This guidance is currently included in Acquisition Letter 99-05.

▶ Chapter 70 - *Contract Administration*

This new chapter incorporates into the Acquisition Guide an Appendix to contain a consolidated Department-wide reference tool for Contracting Officers, Contract Specialists, and others involved in the day-to-day contract administration functions for the Department's performance-based management contracts (PBMC).

▶ Chapter 70 - *Performance-Based Contracting*

This new chapter incorporates into the Acquisition Guide an Appendix to contain guidance and instruction for the development and administration of Performance-Based Contracting concepts for the Department's management and operating contracts, and other major operating contracts, as appropriate. This topic was formerly addressed in several canceled Acquisition Letters, including 95-04, 97-08, 97-09, and 98-08.

▶ Chapter 71 - *Performance-Based Incentives and Related Approvals*

This new chapter provides guidance and instruction concerning Headquarters review and approval of:

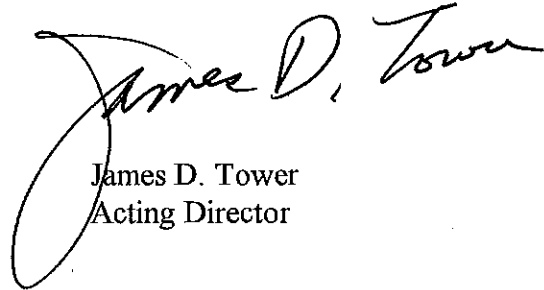
- (i) fee and incentive structures for Performance-Based Management Contracts (PBMCs) and Management and Integration (M&I) contracts;
- (ii) acquisition plans, solicitations, and contracts for Department of Energy privatization projects funded by the Office of Environmental Management;
- (iii) general requirements for formal administrative processes and procedures at each contracting activity relating to performance-based incentives; and,
- (iv) requirements pertaining to Heads of Contracting Activity (HCA) waiver requests from Headquarters performance-based incentive approvals.

These review processes were formerly addressed in canceled Acquisition Letters 97-06 and 97-08.

FLASH 2000-25

3. Management and Operating Contract Clause Matrix On-Line

This matrix identifies clauses, prescribed in FAR Part 52 and DEAR Parts 952 and 970, which are to be used in DOE's M&O contracts. The matrix has been updated to incorporate all DEAR final rulemakings to date.

A handwritten signature in black ink, reading "James D. Tower". The signature is fluid and cursive, with the first name "James" and last name "Tower" clearly legible. The middle initial "D." is smaller and less distinct. The signature is positioned above the printed name and title.

James D. Tower
Acting Director

cc:
PPAG Members



Headquarters Policy Flash

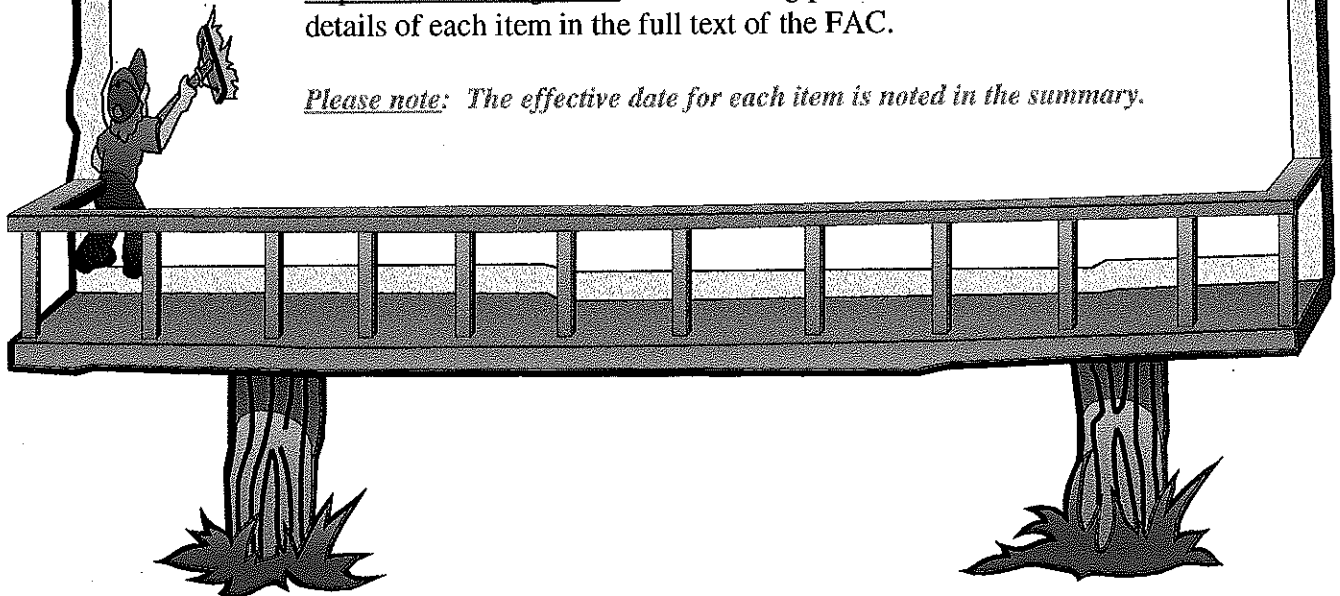
FLASH 2000-26

DATE: November 9, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Federal Acquisition Circular (FAC) 97-20

This Policy Flash summarizes the two items included in FAC 97-20, which was published in the Federal Register on October 11, 2000, at 65 FR 60542. The FAC is available via the internet at <http://www.arnet.gov/far> . Contracting personnel should review the details of each item in the full text of the FAC.

Please note: The effective date for each item is noted in the summary.



FLASH 2000-26
(NOVEMBER 9, 2000)

1. Veterans Entrepreneurship and Small Business Development Act of 1999

Effective Date: October 11, 2000

This interim rule amends the FAR to implement sections 501(c), 502(a)(2), and 604(d) of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106-50). This Act establishes new assistance programs for veterans and service-disabled veterans who own and operate small businesses. This interim rule-

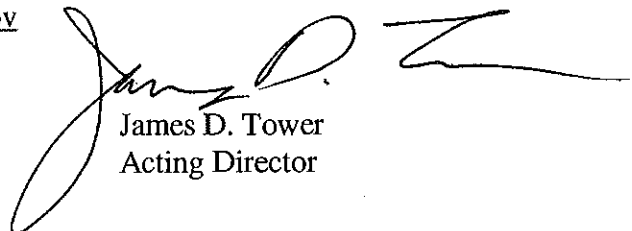
- ✓ Defines the terms "veteran-owned small business concerns" and "service disabled veteran-owned small business concerns;"
- ✓ Establishes that veteran-owned and service-disabled veteran-owned small businesses be afforded maximum practical opportunity to participate in the performance of contracts and subcontracts awarded by any Federal agency;
- ✓ Establishes a requirement to include a goal for veteran-owned small businesses in subcontracting plans under FAR 52.219-9; and
- ✓ Amends the SF 294 and 295 to add data collection requirements for subcontract awards to veteran-owned small businesses and service-disabled veteran owned small business concerns.

2. Truth in Negotiations Act Threshold

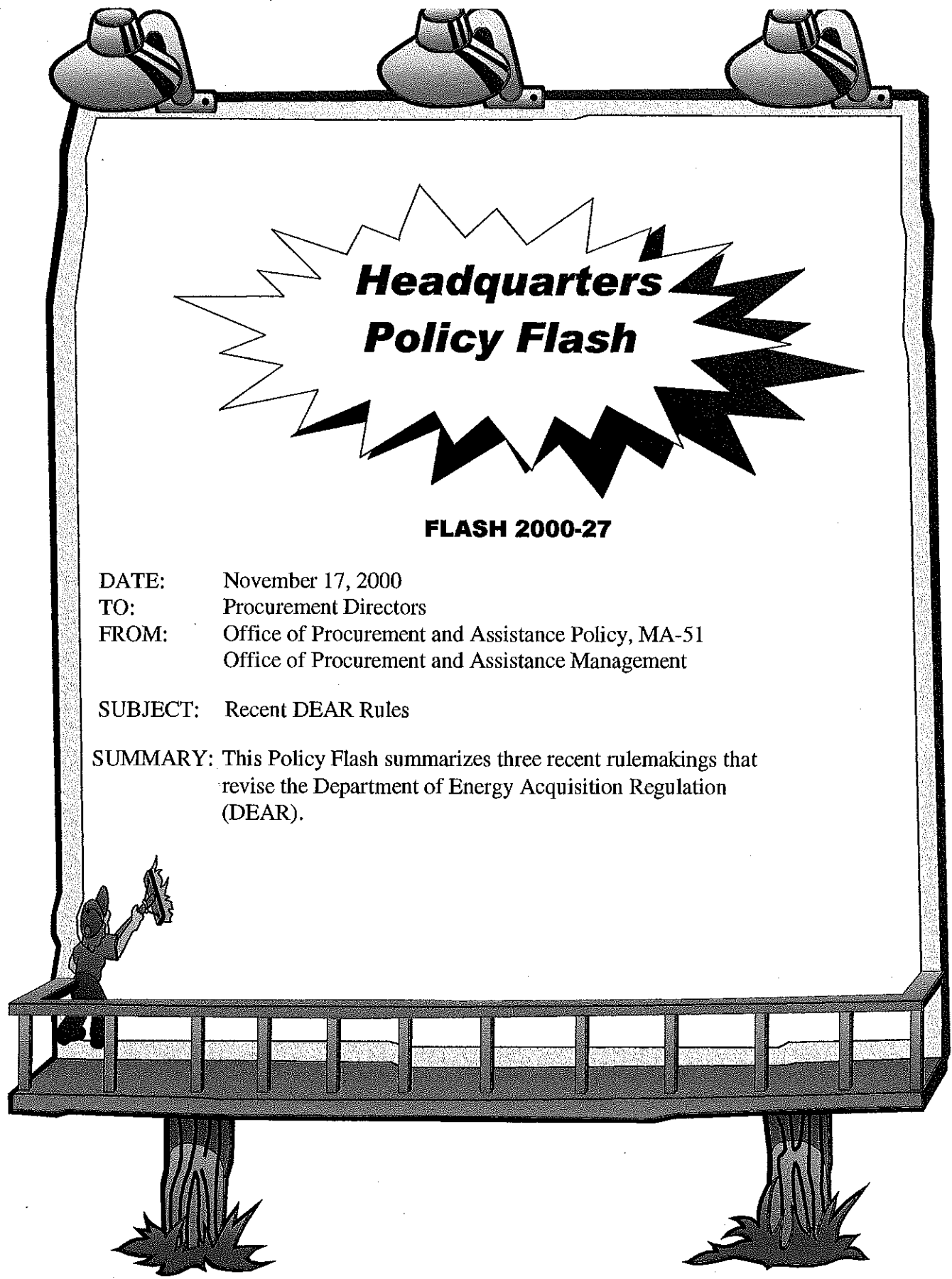
Effective Date: October 11, 2000

This final rule amends FAR 15.403-4 to increase the threshold for obtaining cost or pricing data from \$500,000 to \$550,000. This implements the requirements of 10 U.S.C. 2306a (a) (7) and 41 U.S.C. 254b(a) (7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995.

For further questions related to this Flash, contact Ms. Denise Wright of this office at (202) 586-6217 or via e-mail at denise.wright@pr.doe.gov


James D. Tower
Acting Director

cc:
PPAG Members



DATE: November 17, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: Recent DEAR Rules

SUMMARY: This Policy Flash summarizes three recent rulemakings that revise the Department of Energy Acquisition Regulation (DEAR).

FLASH 2000-27

November 17, 2000

Procurement personnel should read each of the following rulemakings in their entirety at the Federal Register Website at:

http://www.access.gpo.gov/su_docs/aces/aces140.html

1. DEAR - Costs Associated With Whistleblower Actions

This final rule (65 FR 62299, October 18, 2000) amends the DEAR to establish the Department's policy on the reimbursement of contractor settlement, award and defense costs associated with contractor employee whistleblower actions. This policy applies to the Department's cost reimbursement contractors and subcontractors with a contract valued over \$5,000,000. Costs associated with whistleblower actions filed by an employee in Federal and state courts, and with Federal agencies under 29 CFR Part 24, 48 CFR Subpart 3.9, 10 CFR Part 708 or 42 U.S.C. 7239 will be subject to the reimbursement provisions of the new regulation.

EFFECTIVE DATE: The changes in the DEAR are effective November 17, 2000. An Acquisition Letter is being developed to provide more detailed guidance to contracting officers on this final rule.

For further information on this rule, contact Terrence D. Sheppard, (202) 586-8193; e-mail terry.sheppard@hq.doe.gov.

2. DEAR - Contractor Legal Management Requirements

This proposed rule (65 FR 63809, October 25, 2000) would establish new regulations covering contractor legal management requirements in 10 CFR Part 719. Conforming amendments are also proposed to the DEAR. The proposed regulation would cover legal costs to be reimbursed by the Department to its facility management contractors with contracts exceeding \$10,000,000.

Written comments must be received on or before the close of business November 24, 2000. Comments (3 copies) should be addressed to: Laura Fullerton, GC-61, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW, Washington, DC 20585.

For further information contact Laura Fullerton, (202) 586-3420, (Laura.Fullerton@hq.doe.gov) or Anne Broker, (202) 586-5060, (Anne.Broker@hq.doe.gov).

FLASH 2000-27

November 17, 2000


3. DEAR - Revision of Patent Regulations Relating to DOE Management and Operating Contracts

This interim final rule (65 FR 68932, November 15, 2000) is amending the DEAR to improve the patent coverage relating to management and operating contracts. The clauses contained therein generally reflect the clauses used in such DOE contracts over the last five years. The changes made pursuant to this rule adapt patent related clauses to subcontracting under management and operating contracts, will result in clauses stated in "plain language," and will provide a complete set of patent clauses for all varieties of management and operating contracts.

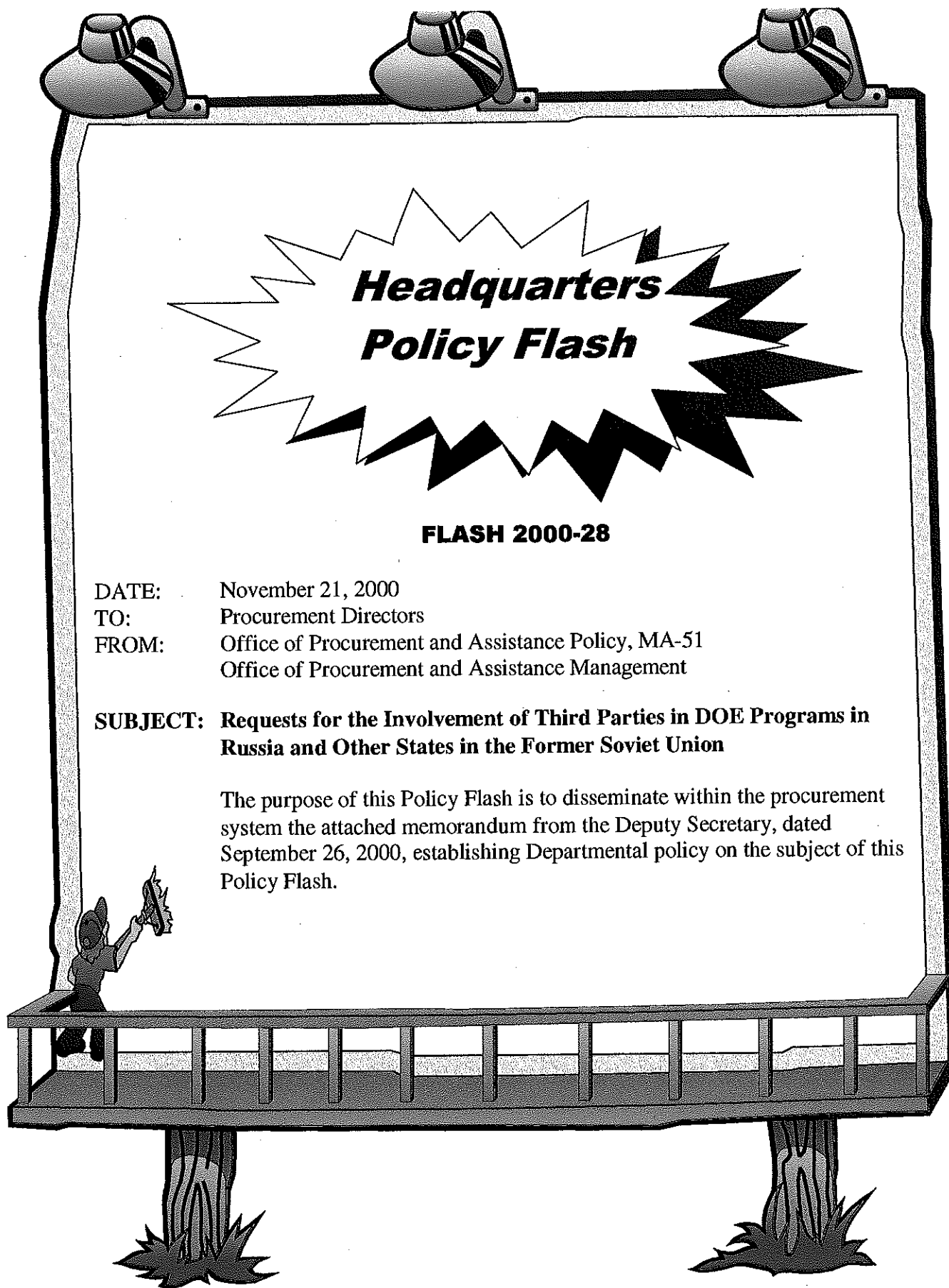
EFFECTIVE DATE: This rule is effective December 15, 2000.

Comments on the interim final rule should be submitted by January 16, 2001. Comments (3 copies) should be addressed to Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, D.C. 20585.

For further information on this interim rule, contact Robert M. Webb at (202) 586-8264.


Gwendolyn S. Cowan
Director

cc:
PPAG Members



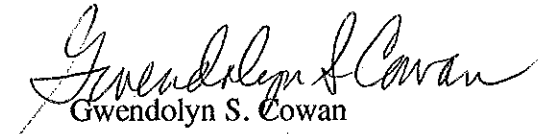
FLASH 2000-28
(NOVEMBER 21, 2000)

DISCUSSION

An important Departmental mission involves the award of prime contracts and the award of subcontracts by certain of DOE's management and operating contractors to provide monies to Russian scientific institutes and installations for the employment of Russian scientists in pursuit of peaceful and commercially viable technologies, the maintenance of nuclear power plants, and the maintenance and upgrading of security around nuclear material storage sites.

Certain of the Russian institutes and installations have urged DOE or its contractors to award the contracts or subcontracts to third parties other than the three tax exempt third parties identified in the memorandum. The memorandum states that contracting with other than the three identified tax exempt third parties requires approval and provides the procedure for approval.

For further questions related to this Flash, contact Mr. Robert Webb of this office at (202) 586-8264 or via e-mail at robert.webb@pr.doe.gov


Gwendolyn S. Cowan
Director

Attachment

cc: PPAG Members




The Deputy Secretary of Energy

Washington, DC 20585

September 26, 2000

MEMORANDUM FOR: DISTRIBUTION

FROM: T. J. GLAUTHIER 

SUBJECT: REQUESTS FOR THE INVOLVEMENT OF THIRD PARTIES
IN DOE PROGRAMS IN RUSSIA AND OTHER STATES IN
THE FORMER SOVIET UNION

The Department of Energy has in place several programs that use either prime contracts or subcontracts under management and operating contracts to provide monies to Russian scientific institutes and installations for the employment of Russian scientists in pursuit of peaceful and commercially viable technologies, the maintenance of nuclear power plants, and the maintenance and upgrading of security around nuclear material storage sites. By statutory mandate and in pursuit of most efficiently accomplishing the very important purposes of these programs, the Department and its management and operating contractors have established mechanisms for the administration of payments under these contracts and subcontracts that avoid the imposition of taxes by the governments involved and help ensure that DOE monies are properly utilized. These mechanisms consist of the use of three tax exempt third parties: the International Science and Technology Center (ISTC), the Science and Technology Center in Ukraine (STCU), and the Civilian Research and Development Foundation (CRDF).

Certain of the Russian institutes and installations, under whose auspices the work has been and is being performed and which are the direct beneficiaries of these programs, have urged some of the Department's programs to contract or cause subcontracts to be awarded to other third parties. These other third parties offer no apparent substantive benefit to the accomplishment of DOE's programmatic objectives in those countries and pose risks to the proper and efficient use of DOE's monies. The risks are sufficiently large in the stewardship of public funds and the carrying out of these programs that I am issuing this memorandum with regard to the involvement of third parties other than the ISTC, the STCU, or the CRDF.

Simply put, I see no reason why any DOE program would not take advantage of the administrative capabilities and tax exempt status of the ISTC, the STCU, or the CRDF and want that option to be seriously considered. In any event, the Department will not, and our contracting officers will direct our management and operating contractors that they not, negotiate contract instruments with third parties unless (1) the third party is either the ISTC, the STCU, or the CRDF, or (2) a request for permission to negotiate contract instruments with other third parties is approved by the DOE Procurement Executive or the NNSA Procurement Executive, as appropriate. The request must be concurred in by the cognizant DOE contracting officer and DOE counsel. Such requests for permission must present the facts that purport to make involvement of the proposed third party necessary and assure that controls are in place to cause

the monies involved to be efficiently and effectively put in the hands of the institutes and installations where the work will be performed and scientists who will perform the work. Any such request should also include a discussion of the resulting treatment of taxes by Russia or other state of the Former Soviet Union.

A copy of the December 22, 1999 memorandum on the use of the CRDF payment mechanism is attached for your information. Should you have any questions concerning the matter discussed above, please contact Janet Barsy for legal matters at (202) 586-3429, Eileen Malloy for policy matters concerning Russia at (202) 586-8900, and your PSO for matters pertaining to your particular programmatic activity.

It has been determined that a field management council review of this notice is not required.

Thank you

Attachments: 12/22/99 memorandum on IPP payments

cc: Under Secretary Moniz
NNSA Administrator Gordon
Assistant Secretary for Energy Efficiency
And Renewable Energy
Assistant Secretary for Environmental
Management
Assistant Secretary for Environment
Safety and Health
Assistant Secretary for International Affairs
Acting Assistant Secretary for Fossil Energy
Deputy Administrator for Defense Programs
Acting Deputy Administrator for Defense Nuclear Nonproliferation
Director, Office of Civilian Radioactive
Waste Management
Director, Office of Nuclear Energy, Science and Technology
Director, Office of Science
Director, Office of Policy
Director, Office of Management and Administration
General Counsel
Chief Financial Officer
Director, Office of Management and Administration

DISTRIBUTION:

Richard E. Glass
Manager
U.S. Department of Energy
Albuquerque Operations Office

5/21/04

Dr. Robert L. San Martin
Manager
U.S. Department of Energy
Chicago Operations Office

Bob - Could you please
call Dave Lester?

Beverly A. Cook
Manager
U.S. Department of Energy
Idaho Operations Office

Is this memo still valid?

G. Leah Dever
Manager
U.S. Department of Energy
Oak Ridge Operations Office

Was it incorporated into or
relate to AL-2000-05?

Keith A. Klein
Manager
U.S. Department of Energy
Richland Operations Office

Frank Stewart
Manager
U.S. Department of Energy
Golden Field Office

Mike F.

Camille Yuan-Soo Hoo
Manager
U.S. Department of Energy
Oakland Field Office



The Deputy Secretary of Energy

1000 Independence Avenue, S.W.
Washington, D.C. 20585
(202) 586-5500 • FAX (202) 586-0148

December 22, 1999

MEMORANDUM FOR DISTRIBUTION

FROM:

T.J. GLAUTHIER

SUBJECT:

Initiatives for Proliferation Prevention Program: Section 3136 of the National Defense Authorization Act for Fiscal Year 2000 and its Effect on Subcontracts with Russian and Ukrainian Institutes in the New Independent States

This provides guidance on the implementation of certain funding limitations relating to the Initiatives for Proliferation Prevention Program ("IPP Program") contained in Section 3136 of the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65 ("Act") (Attachment 1).

The IPP Program was established in 1994 to employ weapons scientists in the Newly Independent States ("NIS") of Russia, Ukraine, Belarus, and Kazakhstan in the pursuit of science with peaceful technology transfer applications. Up to this point in time, the primary instruments used for accomplishing the program mission have been subcontracts between certain DOE management and operating (M&O) contractors and NIS scientific Institutes ("Institutes").

During the past year, I know all of you involved in the IPP Program have been working hard to improve the management of the Program and to increase the proportion of funds that ultimately reach the scientists and engineers overseas who we are trying to support with this Program. The Secretary and I are pleased with the progress that has been made. I am issuing this memorandum to facilitate implementation of some of these changes, especially regarding taxation.

In addition, Section 3136 of the Act contains a number of restrictions related to the use of appropriated funds for, and the conduct of, the IPP Program. Among those restrictions are (1) a limitation (of not more than 35 percent) on the amount of IPP Program funds available in any fiscal year beyond FY 1999 that DOE national laboratories may use to carry out or provide oversight of activities under the IPP program; (2) a prohibition on the use of IPP Program funds for the payment of any tax or customs duty levied by the government of the Russian Federation; and (3) a requirement that the Secretary of Energy notify congressional defense committees in the event payment of a tax or duty is unavoidable and ensure that sufficient additional funds are provided to the IPP Program to offset the amount of any taxes or duties paid.



Implementation Guidance:

In order to implement our negotiated changes dealing with taxation and Section 3136 of the Act and maximize the use of IPP Program funds, the following guidance is provided:

- (1) To achieve the 35% limitation in Section 3136 (a)(1) of the Act on the amount of IPP Program funds available after FY 1999 for M&O contractors to carry out or provide oversight of the IPP, DOE is in the process of assuming the prime contracting function from the DOE M&O contractors. As now envisioned, DOE will issue task orders to the Institutes for certain deliverables under the contracts and, since there will be an emphasis in FY 2000 on larger U.S. industry cost-shared projects, it is anticipated that there will be a smaller number of IPP Program projects and contracts than in previous fiscal years. We expect that the focus of the M&O contractors' participation will be on technical design, administration, and acceptance of deliverables under the DOE contracts. Detailed guidance will be provided under separate cover.
- (2) To ensure compliance with the prohibition contained in Section 3136 (a)(6) of the Act on the use of IPP Program funds for Russian taxes and customs duties, DOE is in the process of awarding a "payment services" contract to the U.S. Civilian Research and Development Foundation ("CRDF"), a nonprofit entity that is exempt from taxes and customs duties under Russian Federation law. Additionally, we understand that, although CRDF itself is not tax exempt under Ukrainian law, CRDF has been successful in obtaining exemptions from taxes and duties in Ukraine for projects similar to the IPP Program projects. Accordingly, under the soon-to-be awarded CRDF contract, CRDF will be responsible for making payments to Russian Institutes under existing and prospective subcontracts and contracts. Separate guidance will be provided by the program office as to whether CRDF will be responsible for making payments to Ukrainian institutes under existing and prospective subcontracts and contracts, based on the results of discussions now underway in Kiyiv. Until this separate guidance is provided, national laboratories should be instructed to receive and accept deliverables, and make payments, under existing Ukrainian subcontracts. As a result of this new payment mechanism, cognizant DOE Contracting Officers should direct M&O contractors involved in the IPP Program to make no new payments under their subcontracts with Russian Institutes after September 30, 1999. In the unlikely event that nonpayment would put an M&O contractor in a breach of contract situation, the DOE Contracting Officer should immediately notify William Desmond, the DOE IPP Program Manager, who will coordinate efforts at Headquarters to review payment

alternatives and, if payment is unavoidable, assist in the development of any report to congressional defense committees that may be required under the Act.

- (3) Cognizant DOE Contracting Officers also should direct affected M&O contractors to modify their existing subcontracts with Russian Institutes by incorporating the attached model subcontract clause that authorizes payments to be made to the Institutes by CRDF (Attachment 2). While the M&O contractors will continue to perform the accounting and reporting for their respective subcontracts, they will transmit an advance for the total unpaid balance representing the subcontract value of the outstanding deliverables on the existing subcontracts to the Chief Financial Officer's Capital Accounting Center (CAC). Upon receipt and acceptance of deliverables under the subcontracts, the M&O contractors are to notify the cognizant DOE program manager who in turn will notify the DOE Contracting Officer for the CRDF contract in order to authorize payment by CRDF. Subsequent guidance from the program office will indicate whether this modification will also take place for existing subcontracts with Ukrainian Institutes.

If you have any questions concerning the matters discussed above, please contact James Campbell for financial matters at (202) 586-4490, Robert Webb for procurement matters at (202) 586-8264, and William Desmond for IPP Program matters at (202) 586-1007.

Attachments

cc: Ernest Moniz
Under Secretary
Acting Assistant Secretary
For Defense Programs
Director, Office of Science
Assistant Secretary for Environmental
Management
Assistant Secretary for Energy Efficiency
And Renewable Energy

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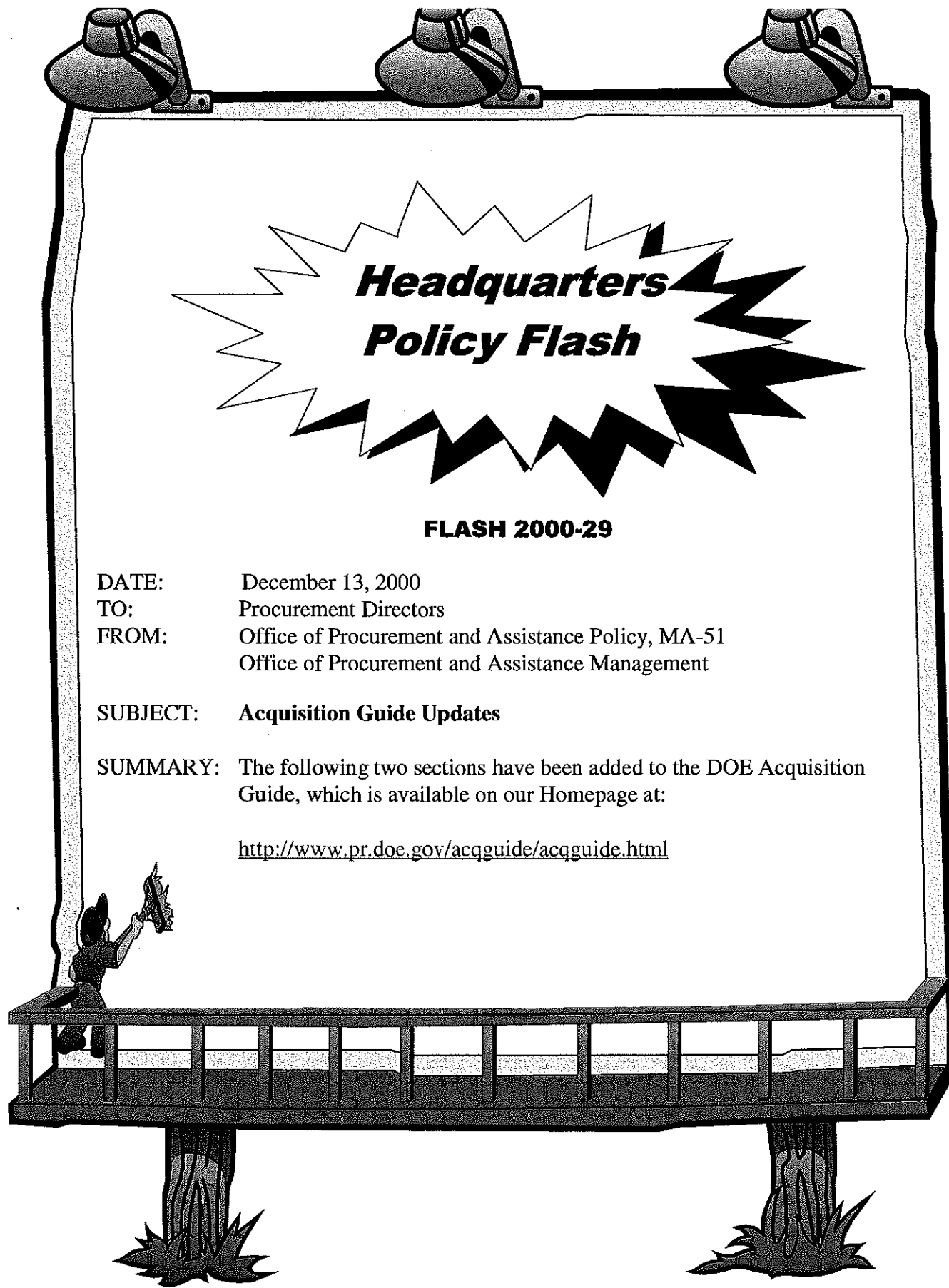
Keith A. Klein
Manager
U.S. Department of Energy
Richland Operations Office

Frank Stewart
Manager
U.S. Department of Energy
Golden Field Office

**Model Clause for Existing Russian Subcontracts
under the Initiatives for Proliferation Prevention (IPP) Program**

Payments for deliverables received and accepted under this subcontract prior to the date of this modification have been made by [the M&O Contractor] and have been credited against the obligations of [the M&O contractor] in accordance with the terms of this subcontract. Effective the date of this modification, payments on behalf of [the M&O Contractor] for deliverables accepted by [the M&O Contractor] under the subcontract are to be made in accordance with the procedures specified in the subcontract by the U.S. Civilian Research and Development Foundation (CRDF), located at 1800 N. Kent Street, Suite 1106, Arlington, Virginia 22209. CRDF will make the specified payments by electronic funds transfer to accounts identified in accordance with the procedures specified in the subcontract. The Institute shall credit each such payment made by CRDF, whether to the Institute or identified scientists, against the obligations of [the M&O contractor] under this subcontract.

The point of contact for CDRF is _____ who can be reached at _____.



Headquarters Policy Flash

FLASH 2000-29

DATE: December 13, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Acquisition Guide Updates**

SUMMARY: The following two sections have been added to the DOE Acquisition Guide, which is available on our Homepage at:

<http://www.pr.doe.gov/acqguide/acqguide.html>

FLASH 2000-29
(December 13, 2000)

Chapter 3 - Antitrust Teaming Arrangements

This new Acquisition Guide chapter forwards Government-wide guidance to assist the Department's Contracting Officers in identifying whether certain contractor teaming arrangements may unduly restrict competition. Although no specific situations within the Department have been identified to date, circumstances involving anticompetitive teaming arrangements that may inhibit competition could arise in DOE acquisitions, particularly in major site/facility management acquisitions.

Recent Government-wide interest in teaming arrangements has focused on the potential for such arrangements to give rise to violations of federal antitrust statutes, as well as the impact on full and open competition in the award of Federal agency contracts. As a result, the Federal Trade Commission (FTC) and the Department of Justice (DOJ) jointly issued the publication entitled, *Antitrust Guidelines for Collaborations Among Competitors*, dated April 2000. The DOE Acquisition Guide chapter includes a link to the Internet site for the FTC/DOJ Guidelines.

Chapter 70 - Contract Options: Evaluating Contractor Past Performance

Recent Secretarial initiatives have focused on strengthening the Department's ability to sanction poor contractor performance and reward outstanding contractor performance. This new Acquisition Guide chapter results from these initiatives and discusses the linking of options for extending the term of a major operating contract with the quality of the contractor's performance.

DEAR 970.1702-1(b) requires, as part of the review identified in FAR 17.605, the contracting officer to assess whether the exercise of an option is in the Government's best interest. Other than a continuing need for the services to be performed, the contractor's performance record is the most important factor to be considered in the contracting officer's determination. In making decisions about whether or not to exercise a contract option, contracting officers are required to review a contractor's overall performance, and to consider factors relating to the contractor's technical, administrative, and cost performance.

The new Acquisition Guide chapter provides a model guideline for the Department's procurement and program personnel to use in assessing a contractor's past performance under a DOE contract for the purpose of making decisions regarding the exercise of contract options. The model provides information that contracting officers should consider when developing their review, including: advance planning issues; selection of team members; past performance information sources; methodology and approach for the review; and, review documentation.

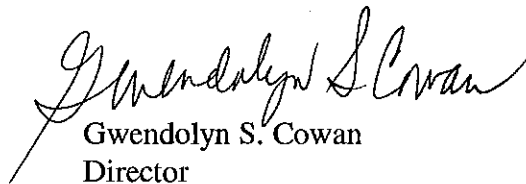
FLASH 2000-29
(December 13, 2000)

The key areas of a past performance review are identified as:

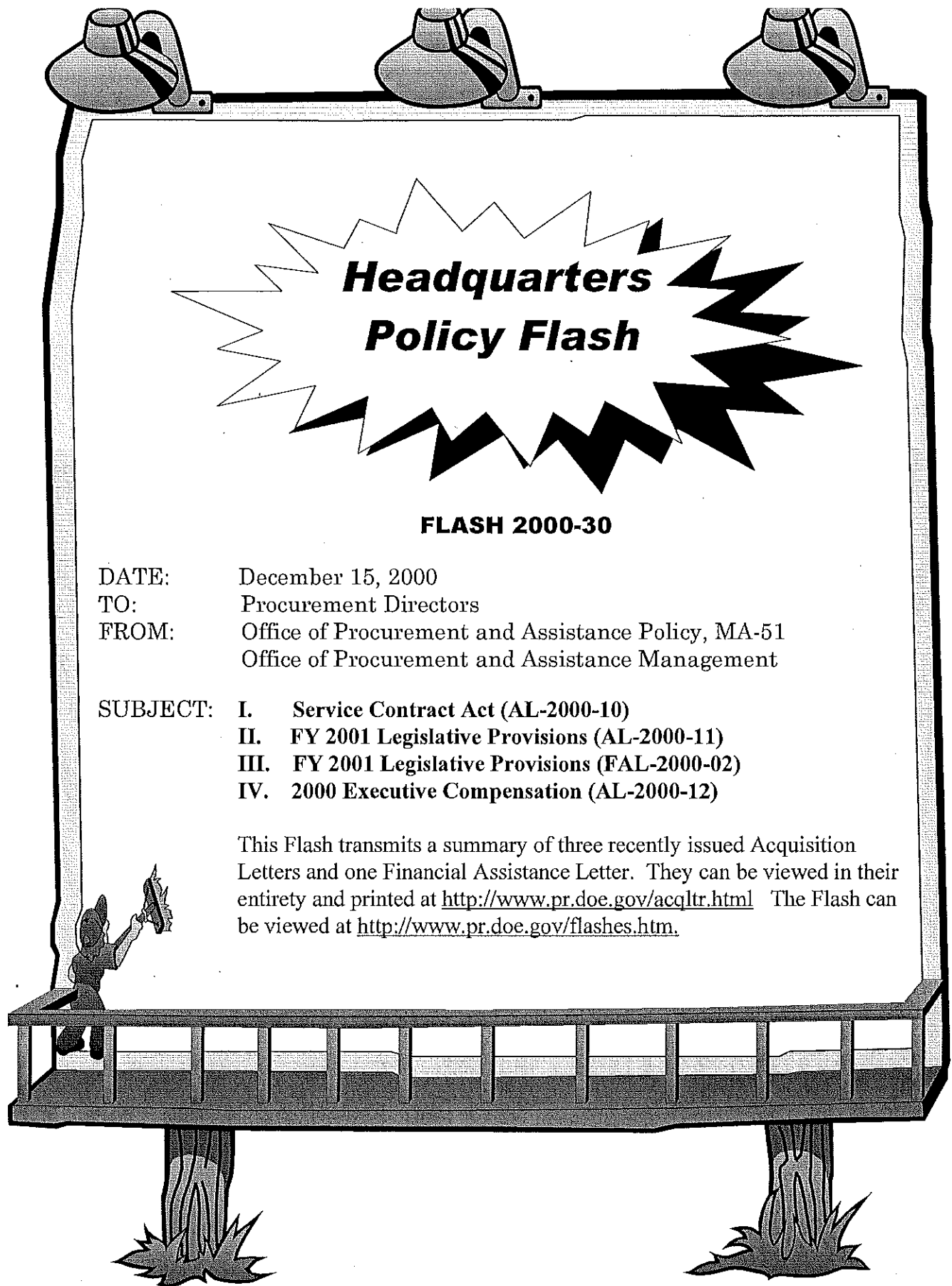
- Accomplishment of Specified Contract Performance Objectives
- Financial Business Management Performance
- Safety, Health and Environmental Performance
- Safeguards and Security Performance
- Performance under Greening the Government Initiatives
- Performance under Socio-economic programs; Diversity clause requirements; EEO compliance; and implementation of restrictions against racial profiling

The chapter suggests that these guidelines should be further tailored by each office to appropriately address site-specific issues and concerns relating to an incumbent contractor's performance history.

Any questions relating to this Flash should be directed to Kevin Smith at 202-586-8189 or via e-mail at Kevin.M.Smith@pr.doe.gov.


Gwendolyn S. Cowan
Director

cc: PPAG Members



FLASH 2000-30
(DECEMBER 15, 2000)

I. Acquisition Letter 2000-10 - Service Contract Act (dated December 14, 2000)

This AL forwards a FAR Class Deviation addressing Service Contract Act requirements for certain subcontracts for commercial services. Notice of the impending Class Deviation was provided to DOE procurement offices in the Headquarters Policy Flash 2000-22, dated August 25, 2000.

For questions related to this Acquisition Letter, please contact Kevin Smith on (202) 586-8189.

II. Acquisition Letter 2000-11 on FY 2001 Legislative Provisions (dated December 15, 2000)

Energy and Water Act

AL 2000-11 provides guidance regarding the implementation of Sections 301, 304, 307, 601, and 602 of the FY 2001 Energy and Water Development Appropriations Act Pub. L. 106-377. Provisions related to the use of competitive procedures, RFP's for unfunded programs, contractor travel, lobbying restrictions, and purchase of American made products are carried over from the FY 2000 Energy and Water Development Appropriations Act Pub. L. 106-60. The travel restrictions include a new provision which excludes placing monetary limits on the reimbursement of travel costs for management and operating contractors within the Laboratory Directed Research and Development program.

Also, be advised that this year's legislation does not require Secretarial approval and congressional notification of FAR deviations when using appropriated funds. Therefore, language pertaining to approval and notification has been removed from our internal policy and procedures. However, all other internal procedures for deviating from FAR and DEAR requirements remain intact. Strict emphasis continues to be placed on Departmental review procedures governing FAR and DEAR deviations. Revised guidelines for deviation review procedures are contained in the Acquisition Guide, Chapter 1.

Another provision not adopted in the FY 2001 Energy and Water Development Act is the language allowing the Secretary of Energy to enter into multi-year contracts without obligating the estimated costs.

FLASH 2000-30
(DECEMBER 15, 2000)

Interior Act

FY 2001 Department of Interior and Related Agencies Appropriations Act (Pub. L. 106.291) contains three provisions relative to DOE procurement programs. Section 301 addresses public availability of information, section 303 lobbying restrictions, and an unnumbered provision that prohibits the use of funds to prepare, issue, or process procurement documents where funds have yet to be appropriated. Guidance implementing these provisions is contained in the attached AL.

Defense Authorization

The Floyd D. Spence National Defense Authorization Act for FY 2001 (Pub. L. 106-398) legislates three revisions to the FAR. These provisions are not included in this AL inasmuch as the issues will require amendments to the Federal Acquisition Regulation.

- ✓ Section 810 provides that procurement notices of contracting opportunities be published by electronic means through a single Government-wide point of entry;
- ✓ Section 813 provides that solicitations for the procurement of information technology services shall not set forth minimum experience or education requirements for proposed contractor personnel in order for a bidder to be eligible for contract award; and,
- ✓ Section 821, which amends the FAR to establish a preference for Performance Based Contracting in the procurement of services.

Additional provisions included in the FY 2001 Defense Authorization Act are related to DOE Design and Construction programs.

- ✓ Section 3122 places monetary limits on general plant projects;
- ✓ Section 3123 places limits on construction projects;
- ✓ Section 3125 directs the Secretary to obtain authority for conceptual and construction design prior to incurring cost over a particular threshold; and,
- ✓ Section 3126 authorizes the Secretary to use any funds available to perform planning, design, and construction activities in an emergency situation.

FLASH 2000-30
(DECEMBER 15, 2000)

These sections are carried over from prior authorization Acts. This AL transmits guidance related to these provisions to the HCAs. As a result of the emphasis placed on Project Engineering and Design (PED) and in order to ensure a closed loop process between Congress, CR, and MA, direction is provided. Guidance in the AL is intended to make Contracting Officers aware of the controlling provisions used during the acquisition of A/E and Constructions services.

For questions related to this Acquisition Letter, contact Denise P. Wright on (202) 586-6217.

III. Financial Assistance Letter (FAL) 2000-02 on FY 2001 Legislative Provisions (dated December 15, 2000)

The guidance in the FAL is the same as the guidance provided in FAL 99-02, Implementation of FY 2000 Legislative Provisions.

For questions related to this FAL, contact Trudy Wood on (202) 586-5625.

IV. Acquisition Letter (AL) 2000-12 - 2000 Executive Compensation (dated December 15, 2000)

The purpose of this AL is four-fold:

- ◆ It appries you of a change to the "benchmark compensation amount" to \$353,010 from \$342,986. This information was previously provided in Flash #2000-14, May 9, 2000 and was published in the *Federal Register* Vol 65, No. 93, page 30640, May 12, 2000.
- ◆ It rescinds AL 99-02, March 11, 1999, which provided guidance relative to Section 804 of the FY 1999 Defense Authorization Act (Pub. L. 105-261) and established a limitation on the reimbursement of certain senior executive compensation incurred after January 1, 1999.
- ◆ It raises HCA approval authority for top contractor management official's annual salary (including allowable variable pay) to \$250,000 from \$225,000 and removes the reference to the Contractor Executive Board in paragraph B.

FLASH 2000-30
(DECEMBER 15, 2000)

- ◆ It restates existing guidance regarding allowable/unallowable cost and salary approval.

For questions related to this Acquisition Letter, please contact Terry Sheppard on 202-586-8193.

cc: PPAG Members



Gwendolyn S. Cowan, Director



Headquarters Policy Flash

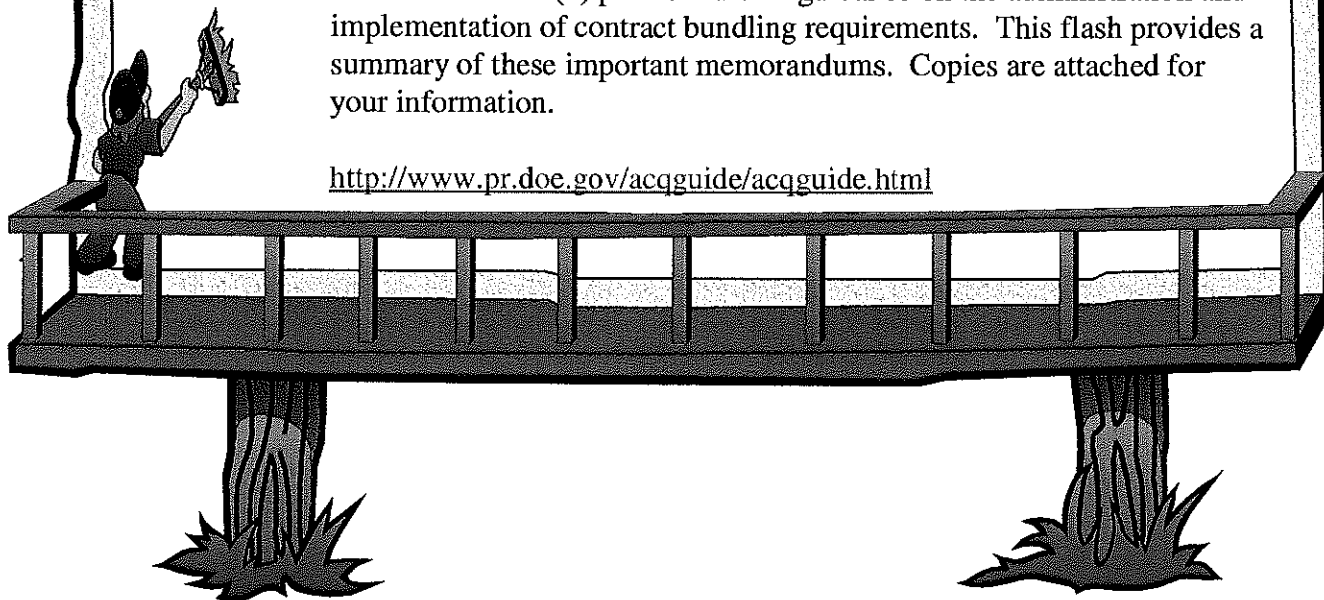
FLASH 2000-31

DATE: December 18, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Small Business Developments**

SUMMARY: Two memorandums were recently issued to (1) increase emphasis on small business prime and subcontracting goals, including small disadvantaged, 8(a), women-owned, HUBZone, and disabled veteran-owned firms and (2) provide further guidance on the administration and implementation of contract bundling requirements. This flash provides a summary of these important memorandums. Copies are attached for your information.

<http://www.pr.doe.gov/acqguide/acqguide.html>



FLASH 2000-31
(December 18, 2000)

Memorandum signed by the Secretary of Energy on December 5, 2000, "Achieving Departmental Small Business Goals:

- ☛ In fiscal year 2000, the Small Business Administration assigned the Department of Energy a "challenge" goal of 5 percent of the total prime contracting base, compared to 3 percent achieved in fiscal year 1999. The Secretary of Energy has announced a continued "challenge" to achieve a goal of 6 percent by fiscal year 2003.
- ☛ The Office of Small and Disadvantaged Business Utilization will develop an Annual Small Business Report to the Secretary to provide a strategy and framework for achieving and increasing the Department's small business contracting goals. The report will identify small business contracting opportunities in order to set incremental goals over a 3 year period, and will describe achievements by DOE elements.
- ☛ Lead Program Secretarial Officers and the National Nuclear Security Administration (NNSA), and other Headquarters departmental elements must submit an annual plan which includes individual strategies and performance for their program and field elements.
- ☛ The Chief Operating Officers Council, the Office of Procurement and Assistance Management, and the NNSA Procurement Executive will work with the OSDBU to develop 3 year goals for major program elements.
- ☛ Small business program managers have been assigned at major departmental elements and each Head of Contracting Activity (HCA) to work with OSDBU. Departmental elements and HCAs shall evaluate the level of their small business program manager to ensure they have sufficient authority to execute their functions.
- ☛ Within 30 days of the issuance of the memorandum, OSDBU will provide guidelines on the development of the Small Business Plans, and a copy of a draft DOE Order to provide further direction on small business requirements.

Memorandum signed by the Deputy Secretary on October 27, 2000, Review of Small Business Participation in Bundled Contract Requirements:

- ☛ Consistent with the guidelines provided in Acquisition Letter 2000-02, dated April 20, 2000, Departmental elements are to avoid contract consolidation which may have adverse effects on small business participation. A summary of the final rule on "contract bundling" published in the Federal Register on July 26, 2000 is attached to the memorandum.

FLASH 2000-31
(December 18, 2000)

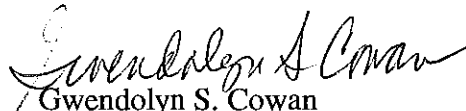
- ☛ Heads of Departmental Elements must coordinate with OSDBU to develop options to maximize small business participation in the acquisition strategy of consolidated requirements.
- ☛ OSDBU will review bundled acquisitions which require the approval of the Deputy Secretary as defined in FAR 7.107(c). This direction applies to all requirements regardless of the method of acquisition, e.g. requests for proposals, task orders, Federal supply schedule delivery orders, Government-wide acquisition contracts, and requirements obtained by another agency through interagency agreements.

In addition to the memorandums above, the Office of Procurement and Assistance Management will continue to place increased management emphasis on providing assistance to field activities to promote small business participation. On October 17, 2000, the Office of Management Systems requested information to determine which contracting actions would require Headquarters approval and benefit from the Headquarters Clearance Review Process. For fiscal year 2000, two new reporting categories of procurement actions were included in the advance planning document:

- procurement actions in excess of \$3 million dollars that have not been set aside, in whole or in part, for small business, small disadvantaged business, women-owned business, or HUBzone business. The actions include requirements identified in Acquisition Letter 2000-02; awards made pursuant to a Government-wide Agency Contract (GWAC); and supplies and services acquired under an Interagency Agreement where performance will be provided through the award of a contract the servicing agency.
- procurement actions that are the result of a consolidation (i.e. "bundling") of requirements, as defined in Section 2.101 of the Federal Acquisition Regulation, regardless of the method of acquisition (request for proposal, task order, federal supply schedule, GWAC, interagency agreement, etc.)

The information provided by field activities was provided to the OSDBU to assist in their advance planning for the required reviews established by the Deputy Secretary's 10/17/00 memorandum and Acquisition Letter 2000-02, dated 4/20/00.

Questions concerning this flash should be directed to Bob Webb at robert.webb@pr.doe.gov or (202) 586-8624.


Gwendolyn S. Cowan
Director


cc: PPAG Members

2 Attachments



The Deputy Secretary of Energy
 Washington, DC 20585
 October 27, 2000

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM: T. J. GLAUTHIER 
SUBJECT: Review of Small Business Participation In Bundled Contract Requirements

In order to balance between the Federal Government's priorities of cost savings, and preserving competition and small business prime contracting, the Small Business Administration published the final rule on "contract bundling" in the Federal Register on July 26, 2000. I am issuing further guidance on the administration and implementation of these requirements.

The final rule requires agencies to avoid unnecessary bundling of contract requirements that precludes small business participation as prime contractors as well as structure contract requirements to facilitate competition by and among small business concerns (attachment). In summary, the new regulations call for a procuring agency intending to bundle requirements to:

- demonstrate measurable substantial benefits or criticality to the agency's mission,
- prepare an acquisition strategy to preserve and promote small business participation as prime contractors and efforts to include small business firms as subcontractors, and
- document certain actions in accordance with the procedures stated in Subpart 7.107 of the Federal Acquisition Regulation (FAR).

Consistent with the guidelines provided to you by the Senior Procurement Executive in Acquisition Letter 2000-02, dated April 20, 2000, I expect you to avoid contract consolidation which may have adverse effects on small business participation. Indeed, I expect you to proactively consider how a consolidation can be effected that advances the participation of small and small disadvantaged business. Therefore, I am directing that the Heads of Departmental Elements coordinate with the Office of Small and Disadvantaged Business Utilization (OSDBU) to develop options to maximize small business participation in the acquisition strategy of consolidated requirements. The Office of Procurement and Assistance Management shall assist the OSDBU in this effort.



I am also requiring OSDBU review of those bundled acquisitions requiring my approval, as defined in FAR 7.107(c). This direction applies to all departmental acquisition requirements regardless of the method of acquisition, e.g., requests for proposals, task orders, Federal supply schedule delivery orders, Government-wide acquisition contracts, and requirements obtained by another agency through interagency agreements.

Please refer any questions regarding the subject matter to the attention of Ms. Esther Aguilera, OSDBU Executive Director, telephone number (202) 586-7377, or esther.aguilera@hq.doe.gov.

Attachment

Bundling Requirements Final Rule Effective July 26, 2000

- The agency head or designee must ensure that acquisition planners, to the maximum extent practicable, avoid unnecessary and unjustified bundling that precludes small business participation as contractors.
- Bundled contract means a contract that is entered into to meet requirements that are consolidated by bundling, excluding a contract awarded and performed entirely outside the United States. "Bundling" means consolidating two or more requirements for supplies or services, previously provided or performed under separate small contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern. "Separate small contract" means a contract that has been performed by one or more small business concerns or that was suitable for a award to one or more small business concerns.
- It authorizes the SBA to appeal to the head of a procuring agency certain decisions made by the agency that SBA believes *adversely* affect SBs, including proposed procurements that include goods or services currently performed by a small business and which are in a quantity or estimated dollar amount, the magnitude of which renders SB *prime* contract participation unlikely.
- It requires a procuring activity, intending to bundle, to document the following:
 - measurably substantial benefits or critical to the agency's mission, and
 - plans to preserve and promote SB participation as prime contractors and efforts to include SBs as subcontractors.
- Contracts which result in an average annual value of \$10 million or more are considered to be substantially bundled. The acquisition strategy must:
 - identify the specific benefits anticipated to be derived from bundling;
 - include an assessment of the specific impediments to participation by SB concerns as contractors that result from bundling;
 - specify actions designed to maximize SB participation as contractors, including provisions that encourage SB teaming;
 - specify actions designed to maximize SB participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements; and
 - include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.
- Agencies should consult SBA PCRs when performing market research.
- Notify any affected incumbent SB concern at least 30 days before release of the solicitation of the Government's intention to bundle the requirement; and how the concerns may contact the appropriate SB representatives.
- For solicitations involving bundling that offer a significant opportunity for subcontracting, the CO must include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for SB participation under contracts that required subcontracting plans.
- For solicitations involving bundling that offer a significant opportunity for subcontracting, the CO must also include proposed SB subcontracting participation in the subcontracting plan as an evaluation factor.



December 5, 2000

MEMORANDUM FOR HEADS OF HEADQUARTERS ELEMENTS

FROM: BILL RICHARDSON *BR*
SUBJECT: Achieving Departmental Small Business Goals

In the memorandum issued on February 11, 2000, entitled "Maximizing Small Business Utilization," I introduced several initiatives for increasing small business participation in Department of Energy (DOE) technical, environmental and scientific work and strengthening the Department's small business functions. The Department and its prime contractors have made progress in implementing these initiatives. Yet, additional monitoring and reporting tools are needed to maintain an emphasis on small business prime and subcontracting goals, including small disadvantaged, 8(a), women-owned, HUBZone, and disabled veteran-owned firms.

The Small Business Administration (SBA) assigned DOE a small business "challenge" goal of 5 percent of the total prime contracting base in fiscal year 2000, compared to 3 percent achieved in fiscal year 1999. While it is difficult to increase small business contracting from 3 to 5% in the span of one year, with adequate planning, the Department can meet and surpass this goal. I am challenging departmental elements to continue to increase small business prime contracting to achieve a goal of 6 percent by fiscal year 2003. At the same time, continued growth in small business subcontracting is important to build on the Department's total small business commitment.

In order to accomplish these objectives, the Office of Small and Disadvantaged Business Utilization (OSDBU) will develop an Annual Small Business Report to the Secretary of Energy (Report) which will provide a strategy and framework for achieving and increasing the Department's small business contracting goals. The purpose of the Report is to identify small business contracting opportunities in order to set incremental goals over a three-year period. The Report also describes achievements by DOE elements to engage small business in technical, scientific, environmental, and other energy-related fields.

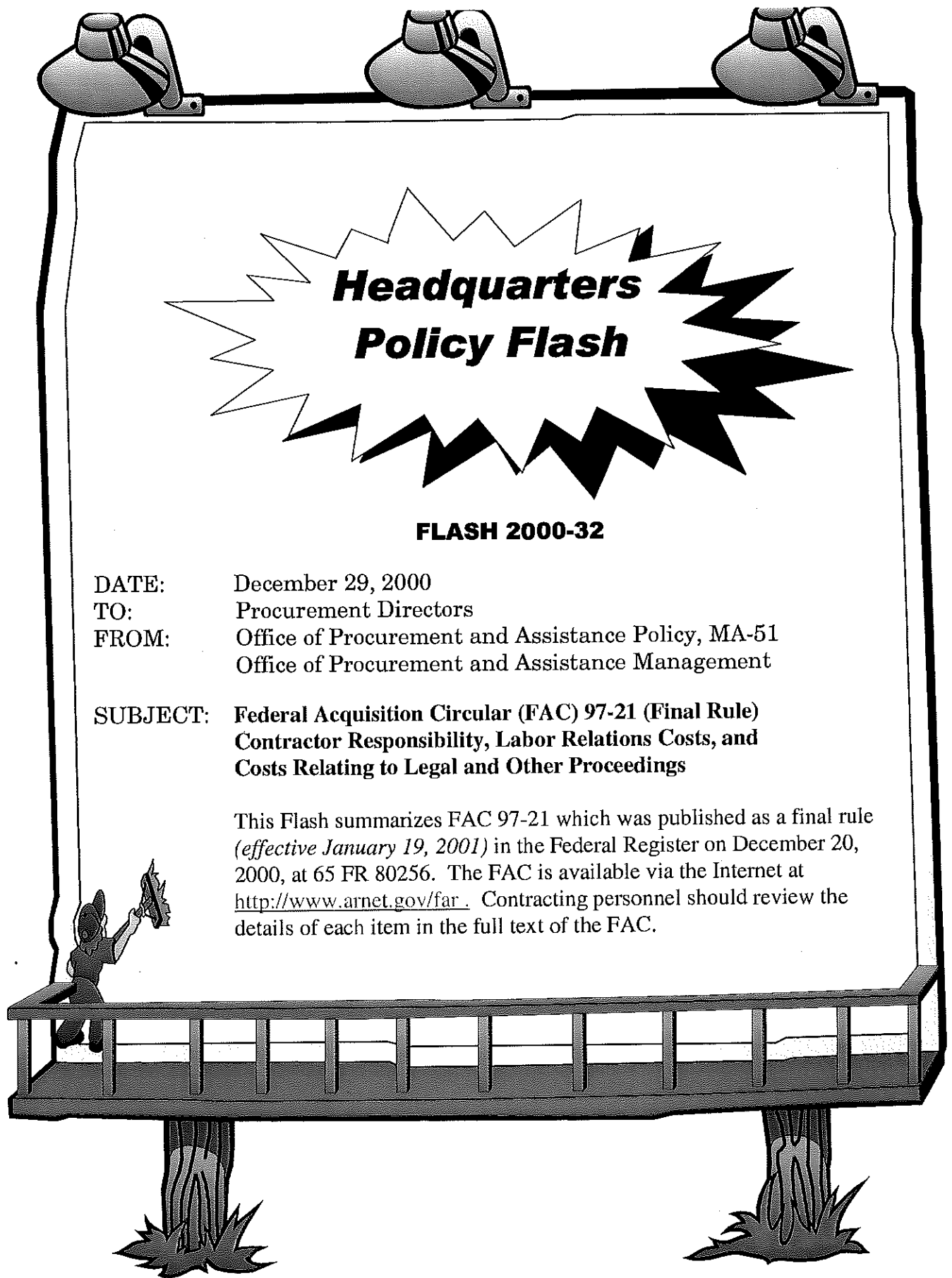
The development of the Report will require that Lead Programmatic Secretarial Officers (LPSOs), the National Nuclear Security Administration (NNSA), and other Headquarters departmental elements submit an Annual Small Business Plan (Plan) to OSDBU. The Plans submitted by LPSOs and NNSA will include individual strategies and performance for their reporting program and field



elements. The head of each organization will be the signing official for their Small Business Plan which is due January 15 for fiscal year 2001 and November 15 thereafter. The Plans are designed to encourage all DOE elements to incorporate small business participation early in the acquisition and program planning process. The Plans will be used as a tool for submitting proposed goals and identifying prospective contracts of \$3 million and above for review by OSDBU. Your Small Business Plan shall include the following: 1) measure small business prime and subcontracting performance against prior year achievements for each small business category; 2) establish target participation goals over a three-year cycle by identifying expiring contracts and other projected contract opportunities; 3) provide a summary of ongoing and projected major acquisitions and programs, describing the level of small business participation at the prime and subcontracting levels, particularly for technical, scientific, environmental, research & development, and financial assistance opportunities; and 4) highlight success stories and outreach efforts to educate the small business community about your business lines, program direction, and operations.

The Chief Operating Officers Council, the Office of Procurement and Assistance Management (MA-5), and the NNSA Procurement Executive will work with OSDBU to develop three year goals for major program elements in order to work towards meeting a 6 percent goal in fiscal year 2003. In addition, the Department has a network of small business program managers to help with these endeavors. In accordance with the Small Business Act, the Department has assigned a small business program manager at major departmental elements and each Head of Contracting Activity (HCA) to work with OSDBU in performing the functions and duties related to sections 8, 15, and 31 of the Act. Each departmental element and HCA shall evaluate the level of their small business program manager to ensure that they have sufficient authority to execute these functions and routinely coordinate small business activities with executive level management.

Within 30 days of the issuance of this memorandum, OSDBU will provide guidelines on the development of the Small Business Plans, as well as draft a DOE Order to provide further direction for carrying out the relevant requirements of the Small Business Act and implementing Federal Acquisition Regulation, Part 19. LPSOs and the NNSA Administrator will provide direction to reporting program and field organizations for completing each of these requirements.



Headquarters Policy Flash

FLASH 2000-32

DATE: December 29, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management
SUBJECT: **Federal Acquisition Circular (FAC) 97-21 (Final Rule)**
Contractor Responsibility, Labor Relations Costs, and
Costs Relating to Legal and Other Proceedings

This Flash summarizes FAC 97-21 which was published as a final rule (*effective January 19, 2001*) in the Federal Register on December 20, 2000, at 65 FR 80256. The FAC is available via the Internet at <http://www.arnet.gov/far>. Contracting personnel should review the details of each item in the full text of the FAC.

FLASH 2000-32
(DECEMBER 29, 2000)

This final rule amends:

- ✓ FAR Part 9 - to clarify that violations of laws can be considered in assessing whether a prospective contractor has a satisfactory record of integrity and business ethics when making contractor responsibility determinations;
- ✓ FAR Parts 14 and 15 to provide notice to prospective contractors as quickly as possible when a nonresponsibility determination is made;
- ✓ FAR Part 31, to make unallowable certain costs related to labor activities, and certain other legal proceedings; and
- ✓ FAR Part 52, to add a requirement for offerors to certify to violations of certain laws.

Questions related to this Flash should be directed to Daphne Tilly of this office at (202) 586-8246.


Gwendolyn S. Cowan, Director

cc:
PPAG Members